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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. 473

PAUL W. HEISEY,

Appellant,

vs.

COUNTY OF ALAMEDA; CITY OF OAKLAND; RUSSELL C. HORSTMANN, as County Assessor of Alameda County; ROGER COIT, as County Treasurer of Alameda County; EDWIN MEESE, JR., as County Tax Collector of Alameda County; CHESTER STANLEY, as Chairman of the Board of Supervisors of Alameda County; CLIFFORD RISHELL, as Mayor of the City of Oakland; THE ROMAN CATHOLIC WELFARE CORPORATION OF SAN FRANCISCO, Intervenor,

Appellees.

Appeal from the Supreme Court of the State of California.

STATEMENT AS TO JURISDICTION.

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Appellees.

Appeal from the Supreme Court of the State of California.

STATEMENT AS TO JURISDICTION.

Appellant Paul W. Heisey submits his statement disclosing in particular the basis upon which this

Court has jurisdiction on appeal to review the split—4 to 3—decision of the Supreme Court of the State of California in Cause No. SF 19,026, which reversed a judgment of the Superior Court of the State of California in and for the County of Alameda.

THE OPINION BELOW.

The opinion of the California Supreme Court is reported in 46 A. C. 648 and 298 P. 2d 1. Copies of the majority and dissenting opinions are attached hereto as Appendix A.

JURISDICTION.

1. This is an appeal by Plaintiff Paul W. Heisey, a taxpayer, from a split decision of the California Supreme Court reversing a judgment of the Superior Court of Alameda County which declared invalid and restrained the execution of Chapter 242, Section 1, Statutes of California, 1951. The suit was commenced by Plaintiff Alfred J. Lundberg on behalf of himself and all taxpayers similarly situated. It sought a permanent injunction and declaratory relief to restrain the execution of the statute so far as it purported to grant a property tax exemption to non-public, sectarian and denominational schools, operated by private including religious groups. Validity of the statute was challenged on the grounds that it was repugnant to certain

state constitutional provisions, to the establishment of religion clause of the First Amendment, and to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

2. The California Supreme Court handed down its opinion on June 6, 1956. Appellant's petition for rehearing was denied on July 5, 1956. Notice of Appeal to this Court was filed by appellant with the Clerk of the California Supreme Court on August 3, 1956.

3. The jurisdiction of this Court on appeal is conferred by 28 U.S.C.A. §1257(2). Appellant challenged the validity of the state statute on the grounds of its repugnance to the First and Fourteenth Amendments, and the decision of the highest court of the state was in favor of its validity.

4. Cases which sustain the jurisdiction of this Court on appeal include *Williams v. Bruffy*, 96 U. S. 176, 24 L. Ed. 716; *Illinois ex rel. McCollum v. Board of Education*, 333 U. S. 203, 92 L. Ed. 649; *Everson v. Board of Education*, 330 U. S. 1, 91 L. Ed. 711.

5. The state statute involved may be found in Chapter 242, Section 1, pp. 502-503 of Volume 1, Statutes of California, 1951 and reads as follows:

> "Section 1. Section 214 of the Revenue and Taxation Code is amended to read:
>
> "214. Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

"(1) The owner is not organized or operated for profit;

"(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual;

"(3) The property is not used or operated by the owner or by any other person for profit regardless of the purposes to which the profit is devoted;

"(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession;

"(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where such use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose;

"(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes;

"(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution which, in addition to complying with the foregoing requirements for the exemption of

charitable organizations in general, has been chartered by the Congress of the United States, and whose objects are the encouragement or conduct of scientific investigation, research and discovery for the benefit of the community at large.

"The exemption provided for herein shall be known as the 'welfare exemption.' This exemption shall be in addition to any other exemption now provided by law. This section shall not be construed to enlarge the college exemption. *Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital or charitable funds, foundations or corporations, which property and funds, foundations or corporations meet all the requirements of this section, shall be deemed to be within the exemption provided for in Section 1c of Article XIII of the Constitution of the State of California and this section.*"

The italicized portion was added by the 1951 amendment and is the portion challenged by this suit.

QUESTIONS PRESENTED.

1. Whether a state statute which grants to religious and certain other private groups complete immunity from property taxation in respect of all their non-public, undercollegiate schools is repugnant to the First Amendment of the United States Constitution as construed in *Illinois ex rel. McCollum v. Board of Education*, 333 U. S. 203, 92 L. Ed. 649; *Everson v. Board of Education*, 330 U. S. 1, 91 L. Ed. 711; and

Zorach v. Clauson, 343 U. S. 306, 96 L. Ed. 954 in that it is a denial to appellant and those similarly situated of freedom from forced public financial support, legal maintenance, or aid of religious activities or institutions, where said statute results in forced public tax support for, and use of the force of the tax system to promote, the private purposes, ecclesiastical activities and institutions of certain religious sects which own and conduct most of such schools, and as a prime and private purpose, teach and instruct therein on sectarian doctrine prohibited in the free tax-supported, public, undercollegiate schools the state has undertaken to provide for all on equal terms.

2. Whether a state statute granting such tax exemption is repugnant to the Fourteenth Amendment of the United States Constitution as construed in *Brown v. Board of Education,* 347 U. S. 483, in that it is a denial of the equal protection or due process clauses to appellant and those similarly situated who are proscribed by law from sectarian indoctrination in said public schools of the state, where said statute results in forced public tax support for, and the use of the force of the tax system to promote, ecclesiastical schools competitive to the public schools, owned and conducted by certain religious sects and that, as a prime and private purpose, teach and instruct therein on such sectarian doctrine forbidden in said public schools.

3. Whether a state statute granting such tax exemption is repugnant to said Fourteenth Amendment, in that it is a denial of the equal protection or

due process clauses to appellant and those similarly situated who are thereby forced to pay additional taxes and thus are deprived of property for a non-public purpose where most of said non-public schools are conducted primarily to advance and teach sectarian and denominational doctrine, forbidden by law as an object of public support in said public schools.

4. Whether a state statute granting such tax exemption is repugnant to the Fourteenth Amendment of the United States Constitution as a denial to appellant and those similarly situated of the equal protection or due process clauses, in that it violates the Constitution of California which provides: "All property in the State except as otherwise in this Constitution provided" * * * "shall be taxed in proportion to its value," and further that "Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever;" and there being no specific exemption provision set forth in said Constitution for said non-public schools.

5. Whether a state statute granting such tax exemption is repugnant to the Fourteenth Amendment of the United States Constitution as a denial to appellant and those similarly situated of the equal pro-

tection or due process clauses in that it is vague, indefinite and uncertain, where said statute was passed pursuant to a provision of the Constitution of California which permits the Legislature to exempt "property used exclusively for religious, hospital or charitable purposes and owned by community chests, funds, foundations or corporations organized and operated for religious, hospital, or charitable purposes," but without inclusion of an educational classification, and without limitation as to the value or amount of property which thus may be removed from the public tax rolls, or as to whether religious indoctrination, or racial, color or creed discrimination, prohibited in said public schools, may be conducted and practiced in said competitive non-public schools.

6. Whether a state statute granting such tax exemption is repugnant to the First and Fourteenth Amendments of the United States Constitution as a denial of the equal protection or due process clauses and as an abridgement of rights and privileges of appellant and those similarly situated to the American form of government, including the separation of church and state guaranteed by the First Amendment, and protection against ruinous competition to said public schools which the State has undertaken to provide for all on equal terms and in which sectarian teaching is prohibited, where said statute results in forced public tax support to advance the private purposes, ecclesiastical activities and institutions of one particular religious sect that by an overwhelming majority owns and conducts most of said non-public

schools and that as a prime and private purpose teaches and instructs therein on its particular sectarian doctrine, its said non-public schools being governed by and teaching the Roman Catholic Papal decrees and canonical laws which are alien and hostile to American concepts of separation of church and state, religious freedom and popular government.

7. Did the Alameda County Superior Court and the California Supreme Court err prejudicially in excluding and refusing to consider and make findings on Plaintiff's Exhibits 5 and 6, comprising textbooks used in said Roman Catholic, non-public, undercollegiate schools, and the testimony on Roman Catholic canonical law, offered in evidence to augment proof and judicial knowledge of the purpose, type and extent of teaching and instruction on sectarian doctrine in such sectarian schools as would be exempt under the statute?

STATEMENT.

This is a taxpayers' action brought to challenge the validity of a 1951 amendment to California Revenue and Taxation Code Section 214, which grants complete immunity from property taxation to non-public, undercollegiate, sectarian schools operated by religious and other private groups. The suit was commenced by Alfred J. Lundberg on behalf of himself and all other citizen, resident, taxpayers of the City of Oakland, County of Alameda and State of California similarly situated.

Under Article XIII, Section 1 of the California Constitution, all property in the state must be taxed unless it is specifically exempted by the State Constitution or by the laws of the United States. In 1944, the people of California adopted a constitutional amendment which added Section 1c to Article XIII and authorized the State Legislature to exempt from taxation property used exclusively for religious, hospital or charitable purposes, owned by community chests, funds, foundations or corporations, and organized and operated for religious, hospital, or charitable purposes. The language of the new constitutional section was taken directly from state and federal revenue law provisions, except that these parent provisions specifically include "educational" purposes along with "religious," "charitable," and other purposes. But, the California Legislature expressly deleted the word "educational" from the proposed language of Section 1c before it was submitted to the voters. And the 1944 Argument to the Voters therefore stated:

> "Churches and colleges already are exempt. Competent legal authority advises that schools other than colleges will not be exempted under this amendment because the Legislature expressly eliminated the term 'educational.'"

Nevertheless, in 1951 the State Legislature added to Section 214 of the Revenue and Taxation Code the following provision which is challenged by this suit:

> "* * * *Property used exclusively for school purposes of less than collegiate grade and owned and*

operated by religious, hospital or charitable funds, foundations or *corporations,* which property and funds, foundations or corporations meet all of the requirements of this section, *shall be deemed to be within the exemption provided for in Section 1c of Article XIII* of the Constitution of the State of California and this section." [Emphasis ours.]

As a result of this 1951 statutory change, over a million and a quarter dollars in tax money will be lost to the public each year through tax exemption, with non-public, sectarian schools receiving the benefit of public services and facilities free of charge, and the remaining taxpayers being forced to foot the bill for the subsidy. Moreover, the tax exemption subsidy overwhelmingly benefits the non-public schools of one sect in particular—the Roman Catholic Church.

In California, the newly exempted Roman Catholic parochial schools are owned almost exclusively by five welfare corporations which, in turn, are controlled by the five Roman Catholic Archdioceses of the state. One of these corporations—the Roman Catholic Welfare Corporation of San Francisco—intervened in this suit. There were produced as witnesses the respective school superintendents for these five Archdioceses of California. At the trial, counsel for the intervenor prepared the following summary of their testimony as to the number of schools which had applied for exemption, the number of students in attendance thereat, the types of church schools, and the total taxes paid in the year 1952-1953 prior to application for exemption:

"1. Total number of schools throughout the State of California which have applied for exemption: 708, of which 473 are Catholic and 235 are not Catholic.

"2. Total number of students being educated in all schools, in California which have applied for exemption: 232,083, of which 206,023 attend Catholic schools and 26,060 attend other schools.

"3. Total amount of taxes paid in fiscal year 1952-1953 in respect of all schools in California which have applied for exemption: $1,123,882.99, of which the amount paid in respect of Catholic schools was $900,763.11, and the amount paid in respect of other schools was $223,119.88."

This evidence thus indicates that over 88% of the tax exemption subsidy goes to Roman Catholic schools in terms of pupils benefited thereby and over 80% to such Roman schools in terms of tax dollars released.

The exempt Roman schools primarily teach religion. Pupils are given daily instruction devoted solely to the doctrines of the Roman Church. In addition, courses are taught daily in religious subjects which the superintendents claimed might be acceptable to all faiths. In addition, and as the textbooks used in these Roman Schools indicate, the Roman Catholic philosophy and religion "is infused into the whole process of learning." (See V *The Catholic Encyclopedia* (1925) p. 304, XIII *The Catholic Encyclopedia* 555, Appendix E of this Jurisdictional Statement.)

Under questioning by plaintiff's counsel, the Roman Catholic School Superintendents identified a number of textbooks—Plaintiff's Exhibits 5 and 6—as being

in use generally throughout California. Plaintiff several times offered these testbooks in evidence, but the trial court declined to admit them, sustaining the Intervenor Roman Catholic Welfare Corporation's objection that the books were incompetent, irrelevant, and immaterial.

Plaintiff offered these textbooks for a fourfold purpose:

1. To prove the purpose and extent of the Roman Catholic sectarian indoctrination in the schools to be exempted. This includes the purpose of the Roman Catholic Church to obtain a monopoly on education for its own aims.

2. To prove that all the school subjects taught are infused and slanted toward the Roman Catholic doctrine and dogma.

3. To prove the extremely inflammatory and divisive nature of the Roman Catholic sectarianism so indoctrinated.

4. To refute the testimony of the Roman Catholic school superintendents to the effect that religious indoctrination takes up only a small portion of the school day and that a portion of this is devoted to principles acceptable to all faiths.

Plaintiff Lundberg and those similarly situated challenged the validity of the 1951 statute under both the State and the Federal Constitutions.

In the original complaint, plaintiff alleged with particularity that the 1951 amendment violated the First and Fourteenth Amendments of the Constitution of the United States [Paragraphs VIII (b), VIII (c),

and VIII (d)]. Similarly, in the Amended Complaint which framed the issues for trial, plaintiff alleged in Paragraph VIII (b) that the 1951 statute violated the First Amendment to the Constitution of the United States, made applicable to the States by the Fourteenth Amendment thereof, in that it was a law respecting an establishment of religion and granted preference to, aided and subsidized parochial or church schools conducted not merely for educational purposes but also for the purpose of indoctrinating children in the particular dogma of the religious sect which conducted the schools. In Paragraph VIII (c), plaintiff alleged with particularity that the statute violated the Fourteenth Amendment of the Constitution of the United States in that it denied to plaintiff the equal protection of the laws and was class legislation. Similarly, in Paragraph VIII (d), plaintiff alleged with particularity that the statute violated the Fourteenth Amendment of the Constitution of the United States in that it was arbitrary.

Plaintiff's insistence that the statute was repugnant to the First and Fourteenth Amendments was apparent also from the evidence offered and adduced at the trial of the action. Thus plaintiff produced evidence as to the religious activities and purposes of the schools that would receive the benefit of the tax exemption subsidy. And plaintiff sought to adduce even further evidence as to the nature of the subject matter taught in the religious schools.

The case was tried before three judges of the Alameda County Superior Court. A majority of the trial

court found that the 1951 statute violated the California Constitution. They then, and for that reason, declined to rule on the Federal questions (Par. 15, Findings of Fact; Par. 1, Conclusions of Law). Judgment was entered in favor of plaintiff and those similarly situated declaring that the 1951 statute violated Article XIII, Section 1 of the California Constitution, and therefore, was null, void, and of no force and effect. The defendant city and county officials were accordingly enjoined and restrained from carrying the law into effect and from receiving and approving claims for exemption. Copies of the Findings of Fact, Conclusions of Law, and Judgment of the trial court are attached hereto as Appendix B.

Dissenting Findings of Fact and Conclusions of Law were rendered by the third judge, and are attached hereto as Appendix C. In Paragraph 7 of these Dissenting Findings of Fact, the third judge expressly declared that all of the allegations of Paragraph VIII of the Amended Complaint were untrue and in particular that "said Amendment of 1951 does not violate the 1st Amendment to the Constitution of the United States," and "said Amendment of 1951 does not violate the 14th Amendment to the Constitution of the United States." Similarly, the dissenting judge concluded in Paragraph 1 of the Conclusions of Law that the statute "is not invalid or unconstitutional in any respect."

Both the defendant City and County officials and the intervenor Roman Catholic Welfare corporation appealed to the California Supreme Court from the

judgment of the trial court. In the proceedings before the California Supreme Court, plaintiff Lundberg continued to raise the Federal questions in his briefs and in the oral arguments. Thus at pages 93 to 144 of his Respondent's Consolidated Reply Brief, plaintiff in seeking affirmance of the judgment of the trial court did so upon the ground among others that the 1951 statute was repugnant to the First and Fourteenth Amendments. Acting pursuant to Article VI, Section 4¾ of the California Constitution, Section 956 (a) of the California Code of Civil Procedure, and Rule 23, Rules on Appeal (36 C. 2d 1, 20), plaintiff specifically asked the California Supreme Court to make findings on the Federal questions. Plaintiff again raised the First and Fourteenth Amendment issues, (1) at pages 32-36 of his Opening Brief in a subsidiary appeal, (2) at pages 71-80 of his Reply to Brief Filed Amici Curiae, and (3) at pages 7-8 and 18-19 of his Supplemental Reply Brief.

The Federal question respecting the "establishment of religion" clause was thus adequately and properly raised and this was recognized by the California Supreme Court in its opinion (See Appendix A). The United States Supreme Court has held in *Charleston Federal Savings & Loan v. Alderson*, 324 U. S. 182, 89 L.Ed. 857 that it will accept such recognition by the state supreme court that the Federal question was properly raised in that court.

Plaintiff likewise properly raised the remainder of the Federal questions respecting the Fourteenth Amendment. Thus he repeatedly urged the Fourteenth

Amendment objections in the trial court and in his appellate briefs. In the face of these objections, the State Supreme Court reversed the judgment of the trial court and sustained the validity of the state statute. The additional Federal issues were thus preserved even if they had not specifically been mentioned in the opinion of the state court. See *Largent v. Texas*, 318 U. S. 418, 87 L. Ed. 873.

Plaintiff again raised the federal questions at pages 27-45 of his Petition for Rehearing, specifically asking that the California Supreme Court reconsider and discuss *all* Federal issues.

The decision of the California Supreme Court was rendered on June 6, 1956.

On June 14, 1956, plaintiff Alfred J. Lundberg died.

Appellant Paul W. Heisey is a citizen, resident taxpayer of the City of Oakland, County of Alameda, State of California, and as such is one of the persons for whom the class suit was originally brought. In fact, under California law, he was at all times a *quasi* party to the action.

Immediately following the death of Mr. Lundberg, and in order to protect the interest of himself and other taxpayers in the appellate and other proceedings, appellant moved the Alameda County Superior Court for an order bringing him in and making him an actual party to this action and permitting him to prosecute the same to a final conclusion as an additional taxpayer plaintiff herein. The Alameda County Superior Court made such an order on June 19, 1956.

Following this, appellant filed a petition in the California Supreme Court for an order bringing him in individually and making him a party to this action on appeal. On June 27, 1956, the California Supreme Court granted his request and ordered that he be added as an additional plaintiff-respondent in the appeal proceedings. A copy of the California Supreme Court order is attached hereto as Appendix D. Appellant Paul W. Heisey therefore, continues these proceedings and prosecutes this appeal on behalf of himself and all the taxpayers situated similarly to himself and the deceased plaintiff Lundberg.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

I. THE CALIFORNIA STATUTE CONTRAVENES THE ESTABLISHMENT OF RELIGION CLAUSE OF THE FIRST AMENDMENT BY FORCING PUBLIC TAX SUPPORT FOR, AND USING THE FORCE OF THE TAX SYSTEM TO PROMOTE NON-PUBLIC, UNDERCOLLEGIATE, SECTARIAN SCHOOLS, COMPETITIVE TO THE PUBLIC SCHOOLS, AND INDOCTRINATING RELIGIOUS DOGMA PROHIBITED IN THE PUBLIC SCHOOLS.

The California Supreme Court has upheld the validity of a state statute which compels public subsidies through tax exemption for non-public, undercollegiate, sectarian schools in amounts exceeding a million dollars a year. The result is forced public tax support for, and the use of the force of the tax system to promote sectarian education. Appellant and taxpayers similarly situated will be compelled to bear a substantial, added tax burden to support non-public schools undertaking the very sectarian indoctrination which is

banned by the Federal and State Constitutions in tax-supported, public, undercollegiate schools. Appellant and other taxpayers must assume this added tax burden under the statute while the subsidized sectarian schools would enjoy immunity from property taxes but receive all the benefits of public services and public facilities free of charge.

Whether such a statute violates the principles of separation of church and state embodied in our Federal Constitution is certainly a substantial question and one deserving plenary consideration, with briefs on the merits and oral argument for its resolution.

In the famous "Virginia Bill for Religious Liberty" originally written by Thomas Jefferson, it is said:

> "That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern."

And the statute enacted:

> "That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever."

The guiding principles of separation of church and state have, of course, been bolted and riveted down into the First Amendment of our Federal Constitution and made applicable to our states by the landmark cases of *Everson v. Board of Education,* 330 U. S. 1, 91

L. Ed. 711, and *Illinois ex rel. McCollum v. Board of Education,* 333 U. S. 203, 92 L. Ed. 649. The limitation which these principles place on our state legislatures has been stated as follows in both the *Everson* and *McCollum* cases:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. NEITHER CAN PASS LAWS WHICH AID ONE RELIGION, AID ALL RELIGIONS, OR PREFER ONE RELIGION OVER ANOTHER.
>
> * * * * *
>
> "NO TAX IN ANY AMOUNT, LARGE OR SMALL, CAN BE LEVIED TO SUPPORT ANY RELIGIOUS ACTIVITIES OR INSTITUTIONS, WHATEVER THEY MAY BE CALLED, OR WHATEVER FORM THEY MAY ADOPT TO TEACH OR PRACTICE RELIGION." [Emphasis ours.]

Moreover, in *Zorach v. Clauson,* 343 U. S. 306, 96 L. Ed. 954, this Court states, "We follow the *McCollum* case" (343 U. S. 315), adding that "GOVERNMENT MAY NOT FINANCE RELIGIOUS GROUPS . . . NOR USE SECULAR INSTITUTIONS TO FORCE ONE OR SOME RELIGION ON ANY PERSON" (343 U. S. 314).

In the *McCollum* case, the United States Supreme Court almost unanimously rejected a program which made public school classrooms available for religious instruction. As this Court later observed in *Zorach v. Clauson* at 343 U. S. 315, it was the fact that "THE

FORCE OF THE PUBLIC SCHOOL WAS USED TO PROMOTE THAT [RELIGIOUS] INSTRUCTION" which made the program repugnant to the First Amendment.

It is therefore clear that the First Amendment means:

1. That our people may not be forced to support or promote the indoctrination of sectarian ideas and beliefs *in non-public schools;*

2. That state laws which aid or promote religious indoctrination *in non-public schools* will be found repugnant to the First Amendment;

3. That state laws which, in the field of *non-public versus public schools,* render *financial aid or grant tax subsidies* to non-public sectarian institutions *are particularly obnoxious* to the principles embodied in the First Amendment; and

4. That the use of the force of a state institution—whether it be the public school system or the public tax system—to aid, promote, or support sectarian education *in non-public schools* is a clear violation of the First Amendment.

Guided by these fundamental principles of religious liberty, the conclusion is inescapable that the California tax exemption statute is repugnant to the United States Constitution.

Tax exemption is both an aid and a subsidy. See *Hunter, Tax Exemption—A Subsidy,* 8 Tax. Magazine 332, 351; *Stimson, The Exemption of Property From Taxation in the U. S.,* 18 Minn. L. Rev. 411, 419;

Baker, Tax Exemption Statutes, 7 Tex. L. Rev. 50; *Note, Catholic Schools and Public Money,* 50 Yale L. J. 917, 922; *Note, Constitutionality of Tax Benefits Accorded Religion,* 49 Col. L. Rev. 968, 985.

As pointed out in *Commonwealth v. Thomas,* 119 Ky. 208, 83 S. W. 572, 573:

> "It does not require profound reflection to reach the conclusion that whatever deficit there is in the fiscal budget due the state for any given year by reason of exemptions of property which would otherwise be required to contribute to the common weal is cast as an additional burden upon the other taxpayers; and it results, therefore, that every exemption is indirectly an additional tax upon the property owners not enjoying a like benefaction. It would follow, therefore, that an exemption in favor of property devoted to the advancement of any particular religious belief is indirectly, at least, a tax upon all the other property owners of the commonwealth to support that belief."

See also *Orr v. Baker,* 4 Ind. 86, 88 and *People ex rel. Auditor v. Illinois Cent. R. Co.,* 119 Ill. 83, 87, 6 N. E. 469, 471.

Following the decisions in the *Everson* and *McCollum* cases, almost every legal writer discussing this problem has pointed out that such tax exemptions violate the Federal Constitution. *Pfeffer, "Church, State and Freedom",* 183-190 (1953); *Note, "Constitutionality of Tax Benefits Accorded Religion,"* 49 Col. L. Rev. 968, 985; *Paulsen, "Preferment of Religious Institutions in Tax and Labor Legislation,"* 14 Law

and Contemp. Prob. 144; *Note, Establishment of Religion by State Aid,* 3 Rutgers L. Rev. 115, 121-123; *Note,* 45 Mich. L. Rev. 1001, 1019-1020; *Note,* 61 Yale L. J. 403, 406-407; *Note, "Establishment of Religion Clause Applied to the States,"* 33 Cornell L. Q. 122, 128.

The opinion of the 4 judge majority of the California Supreme Court has failed to recognize these points. At 46 A.C. 657, the majority of the Court asserts two answers to Appellant's contention that the 1951 statute contravenes the establishment of religion clause of the First Amendment:

First, that the exemption was enacted to promote the general welfare through encouraging education of the young and not to favor religion. Under the circumstances, they say, the benefit received by religious denominations is merely incidental to the achievement of a *public purpose. Everson v. Board of Education,* 330 U. S. 1, is then urged as an analogous precedent by reason of its holding that a program for safe transportation of pupils is a public program.

Second, that even if the statute does benefit religious organizations, it implements a program which began in the Colonial period, is widely followed, and which has been upheld by two state court decisions.

These two "answers" miss the point of the aims and objectives of sectarian, non-public schools, of what is taught in those schools, and of the compelling reasons for church-state separation so carefully spelled out in the three recent decisions of the United States Supreme Court.

In the first place, *sectarian education in non-public schools is not a public purpose.* Instead, it is divisive and competitive to the public schools in which such teaching is barred by law. The Supreme Court rejected the program of sectarian education proposed in the *McCollum* case. Under our federal Constitution, enforced public support of sectarian and religious education are and must always remain matters of private —not public—concern. As Justice Schauer states in his dissenting opinion in *Roman Catholic Welfare Corporation v. City of Piedmont,* 45 C. 2d 325, 335, 289 P.2d 438, 444:

> "It is elementary that the conduct of a public school is a public service while the operation of a private school is *a private business.*"

Moreover this thinking is set forth in Section 8 of Article IX of the California Constitution which expressly provides:

> "No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State."

To say that sectarian schools which openly and avowedly indoctrinate sectarian dogma *and infuse it into the entire learning process* are performing a *public* purpose is to deny the most fundamental premise of the First Amendment—that *religious dogma and*

belief are matters solely for individual choice, not political dictation.

In the second place, a million dollar annual tax exemption is a direct, ever increasing and devoutly sought after subsidy—not a mere "incidental" benefit. In the valuable note entitled *Catholic Schools and Public Money*, 50 Yale L. J. 917, the writer points to the various legal fictions and devices which sectarian schools have used to sustain themselves at the expense of taxpayers. But in the field of tax exemption, there can be no quibbling with a fiction that the children, not the schools, receive the benefit. Religious groups owning or operating sectarian schools—not pupils—are granted the tax exemption. They—not the pupils—would otherwise pay the taxes. Sectarian schools—not pupils—apply for tax exemptions. Sectarian schools—not pupils—spend the released tax money for sectarian educational purposes. And sectarian schools—not the pupils—receive the free public services such as fire, police, sanitation and other protection. To say that a tax exemption for church schools is not an aid to religion is to say that one may erect a church with *public funds* and not violate the Federal Constitution because only the parishioners are substantially benefited thereby.

In the third place, *Everson v. Board of Education*, 330 U. S. 1, is not a truly analogous case. There a split court even held that even the furnishing of transportation to parochial school children "approaches the verge of that [the State Constitutional] power." It was justified merely as a *public safety* measure. No

such alternative purpose exists here. Sectarian schools, controlled by sectarian institutions which are granted the tax exemption, indoctrinate sectarian dogma forbidden in the public schools and are the direct beneficiaries of the tax immunity. *Education* in the sense of public school education is a public purpose, but *sectarian education* is not. Sectarian education is a forbidden object of public support.

In the fourth place, to say that sectarian school tax exemptions arose in the Colonial period is not to justify their existence, forever after, but rather to confess doubt of present validity. For the first of such state tax exemptions arose out of the then unity which in the pre Constitution Colonies existed between church and state. See *The Franklin Street Society v. Manchester,* 60 N. H. 342. The reason for such exemptions vanished with the adoption of our American concepts of separation of church and state and the origin, purpose and development of public schools. See *Stimson, The Exemption of Property from Taxation in the United States,* 18 Minn. L. Rev. 411, 416-419. The exemptions may have originated in our early history, and some as outmoded relics may have survived today, but the reasons for, and not the fact of survival are the important thing.

To begin with, public aid through tax exemption is an easily concealed mode of conferring public favors. It is often resorted to for the very purpose of keeping unobserved the extent of the public donation. *Brainard v. Town of Colchester,* 31 Conn. 407, 410. Furthermore, and perhaps for these reasons, such exemptions

seldom have been challenged under state constitutions. *Zollman, Tax Exemptions of American Church Property,* 14 Mich. L. Rev. 646, 652-653. Also, the courts which have dealt with the problem have failed to recognize or discuss that parochial school exemptions arose in a period when parochial schools were performing a state function by reason of the Colonial church-state unity. And, the clearcut precedent for a challenge under the *Federal* Constitution is so recent that this very case is the first tax exemption case to reach the court following the historic *Everson* and *McCollum* decisions.

Finally, the two cases relied upon by the California Supreme Court provide no well-reasoned authority for its position. Both were decided long before the *Everson* and *McCollum cases.* And both involved *state* constitutional provisions.

In *Trustees of Griswold College v. State of Iowa,* 46 Iowa 275, 26 Am. Rep. 138 (1877), the Iowa court held in a 3-2 decision that a *church* exemption statute did not violate the *state* "establishment of religion clause." But the court gave no reason for its decision and was not presented with a case involving undercollegiate sectarian *schools,* which directly compete with the non-sectarian public schools the state has undertaken to provide for all on free and equal terms.

In *Garrett Biblical Institute v. Elmhurst State Bank,* 331 Ill. 308, 163 N. E. 1 (1928) the question again arose under a *state* constitutional provision, again *did not involve* a competitive parochial *school,* and again arose before the *Everson* and *McCollum*

decisions. The Illinois court based its decision on the fact that no "preference" was shown any *particular* denomination by the exemption provisions and asserted that the tax exemption was not a cost or burden to taxpayers. But as Stimson points out in 18 Minn. L. Rev. 411, 419:

> "An examination of court opinions discloses the fact that legislation granting indirect subsidies, in the form of tax exemption, is upheld by the courts, even though a direct subsidy to the same institutions would be denied under the doctrine of direct public purpose. This is amply illustrated in the case of churches, sectarian schools, and private industrial enterprises. Tax exemption for paupers or war veterans, on the other hand, is not inconsistent with the public purpose doctrine, since direct aid may be extended to such persons. Courts quite generally have failed to see that tax exemption is a subsidy whose burden rests upon taxpayers."

Thus, the need for a plenary consideration of this case is manifest from a failure of the 4-3 majority decision of the California Supreme Court to see the obnoxious and tyrannical burden which the California parochial school exemption subsidy places upon appellant and other taxpayers similarly situated. In California, appellant and those similarly situated must now as public taxpayers directly subsidize schools that compete with the common schools of the state. Moreover, such non-public schools thus would teach and at public expense matters not allowed in the public schools. Also, the subsidy goes overwhelmingly to the schools operated and controlled by one sect, the Roman

Catholic Church. And that church seeks a monopoly on education for its own purposes, and teaches in its sectarian schools that separation of church and state is merely a "practical necessity of evil times," and that attendance at American Public Schools by Roman Catholic children is forbidden and will only be "tolerated" under exceptional circumstances under instructions imported from Rome, and subject to inspection by officials of the Roman Church. See *Everson v. Board of Education,* 330 U. S. 1, 22; representative quotations from *Living Our Faith,* in Appendix E; XIV *The Catholic Encyclopedia,* p. 253; "Encyclical Letter, Pius XI, December 31, 1929, on Christian Education of Youth," *Four Great Encyclicals* (Paulist Press), page 63*; Bouscaren and Ellis, *Canon Law* (1951), pp. 761-767; II Woywood, *A Practical Commentary On The Code of Canon Law* (1925), pp. 117-120.

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*Pope Pius XI is quoted as follows:

"From this it follows that the so-called 'neutral' or 'lay' school, from which religion is excluded, is contrary to the fundamental principles of education. Such a school moreover cannot exist in practice; it is bound to become irreligious. There is no need to repeat what our Predecessors have declared on this point, especially Pius IX and Leo XIII, at times when laicism was beginning in a special manner to infest the public school.

We renew and confirm their declarations as well as the Sacred Canons in which the frequenting of non-Catholic schools, whether neutral or mixed, those namely which are open to Catholics and non-Catholics alike, is forbidden for Catholic children, and can be at most tolerated, on the approval of the Ordinary alone, under determined circumstances of place and time, and with special precautions. Neither can Catholics admit that other types of mixed schools (least of all the so-called 'ecole unique', obligatory on all), in which the students are provided with separate religious instruction but receive other lessons in common with non-Catholic pupils from non-Catholic teachers."

Appellant and those similarly situated are, therefore, forced to bear an additional burden of taxes so that over $1,000,000 annually may go directly to foster and propagate a competitive school system which indoctrinates religious dogma that appellant and such taxpayers disbelieve and teaches concepts alien and hostile to popular government, public schools, and even freedom of thought and expression and religion. That cannot, and should not, be allowed if we are to stay American.

II. THE STATUTE CONTRAVENES THE EQUAL PROTECTION OR DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT BY FORCING APPELLANT AND OTHER TAXPAYERS WHO ARE PROSCRIBED FROM SECTARIAN INDOCTRINATION IN THE PUBLIC SCHOOLS TO SUPPORT NON-PUBLIC SCHOOLS WHICH COMPETE WITH THE PUBLIC SCHOOLS AND INSTRUCT ON THE VERY SECTARIAN SUBJECTS FORBIDDEN IN THE PUBLIC SCHOOLS.

Section 8, Article IX, of the California Constitution provides in part as follows:

> "* * * nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State."

Section 8273 of the California Education Code provides in part as follows:

> "No publication of a sectarian, partisan, or denominational character, shall be used or distributed in any school, or be made a part of any school library, nor shall any sectarian or denominational doctrine be taught in any school."

Appellant and other taxpayers similarly situated are therefore proscribed, not only by the Federal Constitution, but also by the express provisions of the state constitution and state laws from having their religious beliefs propagated or indoctrinated in the public schools. Yet appellant and such taxpayers are compelled to bear an added tax burden and to see the force of the tax system used to promote sectarian instruction in competitive, non-public schools that as a prime and private purpose teach and instruct the very sectarian doctrine forbidden in the public schools.

In *Brown v. Board of Education*, 347 U. S. 483, this Court bespoke the importance of the free, equal, non-sectarian public school system of today. It said:

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. * * * *Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.*" (Emphasis added.)

It is the express and fundamental holding of the *Brown* case that publicly supported education must be made available to all on equal terms.

The state may not establish or support schools which segregate along lines of race, color, or religion. Publicly supported education must be free from unequal treatment, from sectarian influence and from enforced religious indoctrination.

Appellant contends that it would be a violation of the Fourteenth Amendment to forbid racial segregation or religious indoctrination in the state supported common schools and yet at the same time permit the state to evade these mighty constitutional prohibitions by compelling tax support for, or using the force of the tax system to promote schools which engage in the very practices prohibited in the common school system. To endorse such a practice would violate the basic inhibition of *Brown v. Board of Education*, 347 U. S. 483. Publicly supported education must be made available to all on equal terms. There should be no circumvention through a tax-supported private school system.

The 1951 Amendment to the California Revenue and Taxation Code Section 214 is such a law.

Appellant and those similarly situated are proscribed from having their religious views indoctrinated in the public schools. They may not seek or compel public support for the indoctrination of their religious views, or any religious views, in the public schools. Yet they are forced to support, and the force of the tax system is used to promote schools whose primary purpose is the indoctrination of religious dogma which appellant and those similarly situated disbelieve.

This statute therefore fails to make publicly supported education available to all on equal terms. It is an opprobrious discrimination against appellant and those similarly situated—and all the more so because the non-public schools receiving most of the benefit not only seek a monopoly on education and indoctrinate religious dogma, but also compete with and teach hos-

tility to the common school system which the state provides and supports as a cornerstone of American democracy.

III. THE STATUTE CONTRAVENES THE DUE PROCESS CLAUSE BY FORCING APPELLANT AND THOSE SIMILARLY SITUATED TO PAY ADDITIONAL TAXES AND THUS BE DEPRIVED OF PROPERTY FOR A NON-PUBLIC PURPOSE. THE BENEFITED NON-PUBLIC SCHOOLS ARE CONDUCTED PRIMARILY TO ADVANCE SECTARIAN DOCTRINE WHICH IS NOT A PUBLIC PURPOSE BUT ACTUALLY FORBIDDEN BY LAW AS AN OBJECT OF PUBLIC SCHOOL SUPPORT.

It is elementary that the conduct of a public school is a public service while the operation of a private school is a private business. See Schauer, J., *Roman Catholic Welfare Corporation v. City of Piedmont,* 45 C. 2d 325, 335, 289 P. 2d 438, 444.

The Constitution of California provides in Article IX for public schools (see also Article XIII, Section 15) and in Section 15 of Article XVI declares among other things:

> "* * * that it is in the interests of the State and of the people thereof for the State to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the Public School System, such system being a matter of general concern inasmuch as the *education of the children of the State is an obligation and function of the State.*" (Emphasis added)

No such public interest, obligation, or purpose is present where private, sectarian, undercollegiate schools are concerned. Section 8, Article IX of the

California Constitution expressly forbids the appropriation of any public money "for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools." Section 30, Article IV, goes further. It forbids the state legislature, counties, cities, school districts, and any type of municipal corporation from making appropriations, paying public funds, or granting anything to or in aid of any school controlled by a religious creed, church, or sectarian denomination.

The division between public education and sectarian education is therefore clear in California. The former is a public purpose—a matter of public interest—a willingly accepted *obligation* of the state. The latter is a forbidden object of either public aid or public support.

Under the Fourteenth Amendment to the United States Constitution, it has long been held a violation of the "due process" clause to take or tax one man's property and give it to or thereby benefit another for a *non-public purpose. Thompson v. Consolidated Gas Utilities Corp.,* 300 U. S. 55, 57 S. Ct. 364, 81 L. Ed. 510; *Citizens Sav. & L. Assn. v. Topeka,* 20 Wall. 655, 22 L. Ed. 455.

Thus in *Citizens Savings and Loan v. Topeka,* 20 Wall. 655, 22 L. Ed. 455, bonds of the City of Topeka were issued to a private company "to aid and encourage that company in establishing and operating bridge shops." In holding such bonds illegal, the United States Supreme Court specifically recognized that a preponderance of state court authority had upheld

such uses of public moneys to aid manufacturing enterprises. The Court nevertheless said at 87 L. Ed. 461:

> *"Of all the powers conferred upon government that of taxation is most liable to abuse.*
>
> * * * * *
>
> "The power to tax is, therefore, the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of the people."
>
> * * * * *
>
> "This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised.
>
> "To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.
>
> "Nor is it taxation. 'A tax,' says Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or State.' 'Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for *public purposes.*' Cooley, Const. Lim., 479.
>
> "Coulter, J., in *Northern Liberties v. St. John's Church,* 13 Pa. St., 104, says, very forcibly, 'I

think the common mind has everywhere taken in the understanding that taxes are a public imposition, levied by authority of the government for the purpose of carrying on the government in all its machinery and operations—that they are imposed for a *public purpose.'*

* * * * *

"But in the case before us, in which the towns are authorized to contribute aid by way of taxation to any class of manufacturers, there is no difficulty in holding that this is not such a *public purpose* as we have been considering. If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the inn-keeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions." (Emphasis added)

In our case the enforced public support for a private purpose is directed toward a private, undercollegiate educational system. The system directly competes with the Public School System the state is vigorously supporting and expanding. And this private, competitive system exists primarily to advance sectarian ideas and sectarian purposes.

The power of the tax system is therefore not only employed in favor of one particular class— but a class that is hostile and competitive to the very cornerstone of our democratic processes, the Public School. And it

favors a class that seeks a monopoly on education and teaches and indoctrinates on sectarian dogma forbidden to be taught in the Public School.

Appellant therefore urges that a law which compels taxpayers, through a state tax exemption statute, to aid, support and foster such non-public education is a law repugnant to the due process clause of the Fourteenth Amendment.

IV. THE STATUTE CONTRAVENES THE FOURTEENTH AMENDMENT ON OTHER GROUNDS.

The 1951 California statute grants a tax exemption subsidy to sectarian schools without any specific constitutional authority therefor. This, despite the fact that the California Constitution clearly states that the Legislature may grant no tax exemption without specific constitutional authority (Art. XIII, Sec. 1). This also despite the fact that the California Constitution clearly prohibits the Legislature from granting anything to or in aid of a sectarian purpose, or helping to support, or sustaining any sectarian school. There being no specific tax exemption authority set forth in the California Constitution, appellant contends that it is a deprivation of due process for the State Legislature to grant a tax exemption subsidy in the face of specific Constitutional prohibition against such acts.

Moreover, appellant contends that it is a violation of the due process clause of the Fourteenth Amendment for the Legislature to authorize such a tax

exemption subsidy without any limits as to the value or amount of property which thus may be removed from the public tax rolls, or as to whether religious indoctrination, or racial, color or creed discriminations prohibited in the public schools may be conducted and practiced in said competitive, non-public schools. In short, appellant believes that said statute is constitutionally defective by reason of being vague, indefinite, and uncertain.

Finally, appellant contends that the statute is repugnant to the First and Fourteenth Amendments of the United States Constitution as a denial of the equal protection or due process clauses and as an abridgement of rights and privileges of appellant and those similarly situated to the American form of government, including the separation of church and state guaranteed by the First Amendment, and protection against ruinous competition to said public schools which the State has undertaken to provide for all on equal terms and in which sectarian teaching is prohibited, where said statute results in forced public tax support to advance the private purposes, ecclesiastical activities and institutions of one particular religious sect that by an overwhelming majority owns and conducts most of said non-public schools and that as a prime and private purpose seeks a monopoly on education and teaches and instructs therein on its particular sectarian doctrine, its said non-public schools being governed by and teaching the Roman Catholic Papal decrees and canonical laws which are alien and hostile to American concepts of separation

of church and state, religious freedom and popular government.*

Legal support for our contentions above is set forth under other headings herein.

V. BOTH THE ALAMEDA COUNTY SUPERIOR COURT AND THE CALIFORNIA SUPREME COURT ERRED PREJUDICIALLY IN EXCLUDING AND REFUSING TO CONSIDER AND MAKE FINDINGS ON PLAINTIFF'S EXHIBITS 5 AND 6, COMPRISING TEXTBOOKS USED IN SAID ROMAN CATHOLIC, NONPUBLIC, UNDERCOLLEGIATE SCHOOLS, AND THE TESTIMONY ON ROMAN CATHOLIC CANONICAL LAW, OFFERED IN EVIDENCE TO AUGMENT PROOF AND JUDICIAL KNOWLEDGE OF THE PURPOSE, TYPE AND EXTENT OF TEACHING AND INSTRUCTION ON SECTARIAN DOCTRINE IN SUCH SECTARIAN SCHOOLS AS WOULD BE EXEMPT UNDER THE STATUTE.

In *Everson v. Board of Education,* 330 U. S. 1, 22, Mr. Justice Jackson commented:

> "The function of the Church School is a subject on which this record is meager. It shows only

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*In Ryan and Boland, *Catholic Principles of Politics* (1952), p. 320, there appears the following quotation demonstrating the hostile and monopolistic aims of Catholic education:

> "Suppose that the constitutional obstacle to proscription of non-Catholics has been legitimately removed and they themselves have become numerically insignificant: what then would be the proper course of action for a *Catholic State?* Apparently, the latter State could logically tolerate only such religious activities as were confined to the members of the dissenting group. *It could not* permit them to carry on general propaganda nor *accord their organization certain privileges that had formerly been extended to all religious corporations, for example, exemption from taxation.*"

This book was published under the imprimatur of Cardinal Spellman and is the basic text for Catholic colleges and seminaries. It is published under copyright of the National Catholic Welfare Conference.

> that the schools are under superintendence of a priest and that 'religion is taught as a part of the curriculum.' "

Appellant presents no such scanty record in this case.

Thus, the Roman Catholic School superintendents of the schools principally benefiting under the 1951 statute were questioned at length as to the time devoted to religious subjects in the school curricula and as to the nature of the subject matter taught. Appellant believes that the nature of the divisive subject matter taught in such schools is relevant. It is relevant to prove the monopolistic educational designs of the Roman Catholic Church. It is relevant to refute the contention that the public receives some *quid pro quo* in respect of the job done by parochial schools and to refute the contention that these schools represent an alternative way of educating our children consistent with the public school way. It is relevant to show the unjust nature of the burden imposed upon non-exempt taxpayers when they are forced to subsidize—by means of tax exemption—institutions indoctrinating such divisive sectarian matter

In addition, and for said purposes, plaintiff laid the foundation for and offered evidence respecting Canonical laws applicable to exempt Catholic schools and the textbooks used in such schools. The trial court refused to admit the evidence and the textbooks. Plaintiff therefore also offered the evidence and textbooks on the appeal and requested the California Supreme

Court to make findings thereon. This was authorized under Rule 23 of the California Supreme Court Rules on Appeal (36 C. 2d 1, 20). The request and offer were ignored in the decision of the California Supreme Court. As pointed out in our Statement of the Case, the textbooks were offered for a four-fold purpose:

1. To prove the extent of the Roman Catholic sectarian indoctrination in the schools to be exempted. This includes the Roman Catholic monopolistic intentions on education.

2. To prove that all the school subjects taught are infused and slanted toward the Roman Catholic doctrine and dogma.

3. To prove the extremely inflammatory and divisive nature of the Roman Catholic sectarianism so indoctrinated.

4. To refute the testimony of the Roman Catholic school superintendents to the effect that religious indoctrination takes up only a small portion of the school day and that 50% of this religious indoctrination is devoted to principles acceptable to all faiths.

Representative quotes from Plaintiff's Exhibit 6 are set forth in Appendix E hereto.

Plaintiff urges that the trial court and the California Supreme Court erred prejudicially in excluding this evidence.

CONCLUSION.

For the reasons stated above, appellant, PAUL W. HEISEY, respectfully submits that the United States Supreme Court has jurisdiction of this appeal and that there are a number of Federal questions so substantial as to require plenary consideration, with briefs on the merits and oral argument.

Dated, San Francisco, California,
September 24, 1956.

Respectfully submitted,
HENRY C. CLAUSEN,
Counsel for Appellant.

(Appendices Follow.)

Appendix A

In The Supreme Court of the State of California
In Bank

Alfred J. Lundberg,
Plaintiff and Respondent,
vs.
County of Alameda, et al,
Defendants and Appellants,
The Roman Catholic Welfare Corporation of San Francisco (a Corporation),
Intervenor and Appellant.

Plaintiff, a citizen resident of defendant county and a taxpayer therein, brought this suit to challenge the legality of a tax exemption. Such actions are authorized by Section 526a of the Code of Civil Procedure[1] (cf. Delaney v. Lowery, 25 Cal. 2d 561 and, being in aid of the collection of taxes, are distinguishable from

[1]Section 526a of the Code of Civil Procedure provides: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities."

cases in which a party seeking to avoid taxation was denied mandamus on the ground that an action for refund of illegally collected taxes constituted an adequate remedy at law. (See Security-First Nat. Bk. v. Board of Supervisors, 35 Cal. 2d 323; Vista Irr. Dist. v. Board of Supervisors, 32 Cal. 2d 477; Sherman v. Quinn, 31 Cal. 2d 661.)

The suit involves the constitutionality of that portion of Section 214 of the Revenue and Taxation Code[2]

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[2]Section 214 of the Revenue and Taxation Code provides:

"Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

(1) The owner is not organized or operated for profit; provided, that in the case of hospitals, such organization shall not be deemed to be organized or operated for profit, if during the immediate preceding fiscal year the excess of operating revenue, exclusive of gifts, endowments and grants-in-aid, over operating expenses shall not have exceeded a sum equivalent to 10 percent of such operating expenses. As used herein, operating expenses shall include depreciation based on cost of replacement and amortization of, and interest on, indebtedness;

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual;

(3) The property is used for the actual operation of the exempt activity;

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession;

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where such use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose;

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or cor-

which grants a tax exemption to property "used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital or charitable funds, foundations or corporations," provided that the property is used for nonprofit purposes and owned by nonprofit organizations. The exemption in question was added to section 214 in 1951 and was approved by the people on referendum at the general election of 1952. This appeal was taken from a judgment declaring the exemption invalid.

In California all property must be taxed unless an exemption is authorized by the state Constitution or granted by the laws of the United States. Section 1c of article XIII of the Constitution declares, "In addition to such exemptions as are now provided in this Constitution, the Legislature may exempt from taxation all or any portion of property used exclusively for

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poration organized and operated for religious, hospital, scientific, or charitable purposes;

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution which, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research and discovery for the benefit of the community at large.

"The exemption provided for herein shall be known as the 'welfare exemption.' This exemption shall be in addition to any other exemption now provided by law. This section shall not be construed to enlarge the college exemption. Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital or charitable funds, foundations or corporations, which property and funds, foundations or corporations meet all of the requirements of this section, shall be deemed to be within the exemption provided for in Section 1c of Article XIII of the Constitution of the State of California and this section."

religious, hospital or charitable purposes and owned by community chests, funds, foundations or corporations organized and operated for religious, hospital or charitable purposes, not conducted for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."[3]

The validity of the statutory exemption depends, first, upon whether an educational purpose may be regarded as a charitable purpose within the meaning of section 1c of article XIII. The term charity has been defined in a number of California cases as "a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons—either by bringing their hearts under the influence of education, or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government." (Estate of Halm, 196 Cal. 778, 781-782; Estate of Coleman, 167 Cal. 212, 214; Estate of Sutro, 155 Cal. 727, 736; Estate of Lennon, 152 Cal. 327, 329-330; Estate of Merchant, 143 Cal. 537, 543-544.) This definition was quoted with approval in Scripps etc. Hospital v. Cal. Emp. Com., 24 Cal. 2d 669, 675, where a nonprofit hospital was held exempt

[3]Section 1c, as adopted in 1944, read as quoted above. The following was added by amendment in 1954: "As used in this section, 'property used exclusively for religious, hospital or charitable purposes' shall include a building and its equipment in the course of construction on or after the first Monday of March, 1954, together with the land on which it is located as may be required for the use and occupation of the building, to be used exclusively for religious, hospital or charitable purposes."

from unemployment insurance taxes as a charitable organization.

An educational purpose has been held to be charitable in character where the status of a trust or bequest was in controversy and the gift was for the benefit of the public and not for private gain. (Collier v. Lindley, 203 Cal. 641, 648-650; Estate of Halm, 196 Cal. 778, 781-782; Estate of Yule, 57 Cal. App. 2d 652, 654; Estate of Bailey, 19 Cal. App. 2d 135, 139; Estate of Bartlett, 122 Cal. App. 375, 377; see Rest., Trusts, § 370; 14 C.J.S. 444.) And in other jurisdictions it has been held that nonprofit educational institutions maintained for the benefit of the public qualify as charitable organizations for the purpose of tax exemption. (School of Domestic Arts and Science v. Carr [Ill.], 153 N.E. 669; Appeal Tax Court v. St. Pet. Acad., 50 Md. 321; Board of Assessors v. Garland School of Home Making [Mass.], 6 N.E. 2d 374; State v. Johnston [N.J.], 46 A. 776; Gerke v. Purcell, 25 Ohio St. 229; In re Hill School [Pa.], 87 A. 2d 259; see In re Cooper's Estate [Iowa], 295 N.W. 448; Morgan v. Presbyterian Church of the United States of America [Ky.], 101 S. W. 338; In re Grace [Minn.], 8 N.W. 761.)

The argument made by plaintiff that the word charitable should be narrowly construed in favor of taxability has been rejected by this court in two recent cases involving section 1c of article XIII. (Y.M.C.A. v. County of L.A., 35 Cal. 2d 760; Fredericka Home v. County of San Diego, 35 Cal. 2d 789.) In the Y.M.C.A. case, where it appeared that the Association operated

at an over-all loss in conducting its various activities, we held that dormitory facilities provided by it at relatively low rentals were exempt as property used exclusively for religious and charitable purposes, pointing out that the dormitories were designed mainly to give young men access to a place for study, recreation and residence under wholesome influences and that, therefore, they were incidental to and reasonably necessary for the accomplishment of the organization's purposes of promoting good character and Christian ideals. We refused to follow a contrary holding in another jurisdiction, noting that one of the factors leading to that decision was a "concept of charity as confined solely to the relief of the needy and destitute ... rather than comprehending as well activities which are humanitarian in nature and rendered for the general improvement and betterment of mankind, though the recipients of such benefits may be able to pay at least in part therefor. . . ." (35 Cal. 2d at p. 768.)

The broad meaning of the term charitable set forth in the Y.M.C.A. case was applied in the Fredericka Home case where it was held that a home for the aged, operated on a nonprofit basis, was entitled to tax exemption as a charity although entrance fees were charged. Both of these decisions relied upon Estate of Henderson, 17 Cal. 2d 853, 857, where it was stated, "A bequest is charitable if: (1) It is made for a charitable purpose; its aims and accomplishments are of religious, educational, political or general social interest to mankind. . . . (2) The ultimate recipients constitute either the community as a whole or an unascertainable and indefinite portion thereof. . . . The chari-

table nature of an institution is determined on the same basis."

The fact that the term charitable is only one of three descriptive words used in section 1c does not require that it be narrowly construed against the exemption. To the contrary, in Scripps etc. Hospital v. Cal. Emp. Com., 24 Cal. 2d 669, where an unemployment insurance tax statute exempted organizations formed for purposes such as "religious, charitable, scientific, literary or educational," it was held that a nonprofit hospital was exempt as a charity although the word hospital was not used in the statute. The court stated, "The wide and varied nature of the exemptions thus provided rather clearly indicates a purpose and intention to give the words here in question a broad rather than a strict meaning. . . ." (24 Cal. 2d at p. 676.)

It thus appears that the word charitable has been given a broad construction in tax exemption cases as well as others, and it would seem clear that nonprofit schools owned by nonprofit organizations and operated for the benefit of the public come within the term charitable as defined by our decisions. Moreover, both the Legislature and the people have construed the term charitable in section 1c of article XIII as authorizing exemption of such schools.

Section 1c is an enabling provision which empowers the Legislature to grant exemptions within certain general categories. In acting under this section the Legislature must necessarily construe the terms of the provision in order to determine the extent of the authority conferred upon it. The Legislature has con-

sistently treated the term charitable in section 1c as broad enough to include nonprofit schools, first, by specifically excluding them from exemption and, second, by specifically granting them an exemption. The first construction was made in 1945 when the Legislature originally enacted section 214 of the Revenue and Taxation Code, which provided for the exemption of property used exclusively for charitable purposes. The Legislature must have then believed that the word charitable as used in section 1c authorized the exemption of nonprofit schools, and that the unqualified use of that term in section 214 would result in exempting such schools, because it added at the end of section 214 a proviso that the section should not be construed to include them.[4] If the word charitable was not broad enough to include nonprofit schools, there would have been no necessity for the proviso, and we cannot assume that the Legislature intended to do a useless thing. The next interpretation of section 1c occurred in 1951 when the Legislature amended section 214 to provide for the exemption of nonprofit schools as charitable organizations. The construction thus placed on section 1c by the Legislature was adopted by the people in 1952 when they approved section 214 on referendum.[5]

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[4]As enacted in 1945 section 214 of the Revenue and Taxation Code provided, in part, "This section shall not be construed to enlarge the college exemption or to extend an exemption to property held by or used as an educational institution of less than collegiate grade." (Stats. 1945, ch. 241, p. 706.)

[5]Section 214, as submitted to the people, specified that the property therein described "shall be deemed to be within the exemption provided for in Section 1c of article XIII of the Constitution. . . ."

The presumption is in favor of constitutionality, and the invalidity of an act of the Legislature must be clear and unquestionable before the statute can be declared unconstitutional. We cannot adopt our own interpretation of a provision of the Constitution without regard to the legislative construction, and, where more than one reasonable meaning exists, it is our duty to accept that chosen by the Legislature. (Pacific Indemnity Co. v. Industrial Acc. Com., 215 Cal. 461, 464; Kaiser v. Hopkins, 6 Cal. 2d 537, 540; San Francisco v. Industrial Acc. Com., 183 Cal. 273, 279 et seq.; People v. Southern Pacific Co., 209 Cal. 578, 593-594; see also Woodcock v. Dick, 36 Cal. 2d 146, 148; Reynolds v. State Board of Equalization, 29 Cal. 2d 137, 140; Delaney v. Lowery, 25 Cal. 2d 561, 568-569.) This fundamental principle is particularly applicable where, as here, the statute was enacted pursuant to an enabling provision of the Constitution and there is not only a reasonable legislative construction of that provision but also approval of that construction by the people on referendum.

Plaintiff relies strongly upon the legislative history of section 1c in support of his claim that section 214 is unconstitutional. As originally submitted to the Legislature section 1c read, "The Legislature may exempt from taxation all or any portion of the property owned and used for any of the purposes hereinafter mentioned by community chests, funds, foundations or corporations organized and operated for religious, educational, hospital or charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual." The measure was

entirely recast, and in its final form the word educational was omitted, but there is nothing in the record to show why the provision was revised. As we have seen, nonprofit schools owned by nonprofit organizations and operated for the benefit of the public come within the term charitable, and the Legislature may have omitted the word educational on the theory that, under the authorities here and elsewhere, it was unnecessary to use that specific word in order to authorize the exemption of such schools. In the official voters' pamphlet the argument in favor of adoption of section 1c contained the statement, "Competent legal authority advises that schools other than colleges will not be exempted under this amendment because the Legislature expressly eliminated the term 'educational.'" Numerous other arguments were made, however, for and against adoption, and we cannot say which of the various statements was relied on by the voters. It would be purely speculative to hold that those who voted for the amendment intended to exclude nonprofit schools owned by nonprofit organizations and operated for the benefit of the public. The history of section 1c is inconclusive as to what was intended, and it certainly would not justify a construction of the term charitable contrary to that established by the decisions discussed above, adopted by the Legislature in the 1945 and 1951 sessions, and approved by the people on referendum in 1952. We are satisfied that section 1c authorizes the exemption in question.

It is next argued that the exemption, as applied to schools owned or operated by religious organizations,

is contrary to section 30 of article IV of the California Constitution which provides that the Legislature shall not "grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever. . . ." This section does not expressly mention tax exemptions, but, even if we assume that it prohibited them, it was superseded by the subsequent adoption of section 1½ of article XIII, which exempts property used exclusively for religious worship, and of section 1c, which, as we have seen, authorizes exemption of nonprofit schools and specifically refers to property owned and operated by religious organizations.

The validity of the exemption is also challenged on the theory that it contravenes that portion of the First Amendment of the federal Constitution which forbids the enactment of laws respecting the establishment of religion. This argument is, of course, pertinent only insofar as the exemption would be available to nonprofit schools operated by religious groups. There are two answers to the contention.

In the first place, it is apparent that the exemption was enacted to promote the general welfare through encouraging the education of the young and not to favor religion, since it is not limited to schools maintained by religious groups but applies also to those operated by other charitable organizations. Under the circumstances, any benefit received by religious denominations is merely incidental to the achieve-

ment of a public purpose. An analogous situation was present in Everson v. Board of Education, 330 U.S. 1, where it was held that a statute authorizing the use of public funds to transport pupils could constitutionally be applied to include the furnishing of transportation to parochial schools. The court reasoned that the statute was designed to promote the general welfare, that a parochial school would benefit upon the same terms as would other schools and that the First Amendment does not require that government be hostile to religion in enacting public welfare legislation. (330 U.S. at p. 16 et seq. Cf. Bowker v. Baker, 73 Cal. App. 2d 653, 663; Opinion of the Justices [N.H.], 113 A. 2d 114, 116.)

Secondly, even if we regard the exemption as benefiting religious organizations, it does not follow that it violates the First Amendment. The practice of granting tax exemptions benefiting religious sects began in the colonial period. (See Paulsen, Preferment of Religious Institutions in Tax and Labor Legislation (1949), 14 Law & Contempt. Prob. 144, 147-148; Torpey, Judicial Doctrines of Religious Rights in America (1948), ch. VI, pp. 171-174; Zollman, Tax Exemptions of American Church Property (1916), 14 Mich. L. Rev. 646, 647-650.) Today, at least some tax exemption for religious groups is authorized by statutory or constitutional provisions in every state and the District of Columbia, as well as by federal law. (See Note (1949) 49 Columb. L. Rev. 968, 969-982.) No case has been found holding that the granting of such exemptions is contrary to state or federal

constitutional provisions prohibiting the support or establishment of religion, and, where the matter has been raised, the exemptions have been upheld. (Garrett Biblical Institute v. Elmhurst State Bank [Ill.], 163 N.E. 1, 5; The Trustees of Griswold College v. The State of Iowa, 46 Iowa 275, 282.) The United States Supreme Court, in discussing the prohibition of laws respecting the establishment of religion, recently stated that the standard of constitutionality is the separation of church and state, and that the problem, like many others in constitutional law, is one of degree. (Zorach v. Clauson, 343 U.S. 306, 314.) The principle of separation of church and state is not impaired by granting tax exemptions to religious groups generally, and it seems clear that the First Amendment was not intended to prohibit such exemptions. Accordingly, an exemption of property used for educational purposes may validly be applied to school property owned and operated by religious organizations.

The judgment is reversed. Certain other appeals were taken which have been rendered moot by this decision, and they are therefore dismissed.

Gibson, C.J.

We concur:

Traynor, J.

Spence, J.

McComb, J.

(Copy)
Lundberg v. County of Alameda
S. F. 19026

DISSENTING OPINION OF SCHAUER, J., TO OPINION OF GIBSON, C. J.

Since 1914 the provisions of section 1a of article XIII of the California Constitution have exempted from taxation the property of a non-profit "*educational institution of collegiate grade, . . .* used exclusively for the purposes of education." (Italics added.) The quoted language is specific; it leaves no room for speculation or "construction." The majority opinion holds that the language of section 1c of the same article of the Constitution, adopted in 1944, which authorizes the Legislature to exempt from taxation property "used exclusively for *religious, hospital* or *charitable* purposes and owned by" (italics added) certain institutions, likewise authorizes the exemption of *all* the property of such institutions which is used for educational purposes of any character or grade—more specifically, property used for *schools of less than collegiate grade.* This holding is reached despite the fact that the word "educational" is notably absent from the 1944 amendment.

To so construe section 1c of article XIII as to encompass educational purposes, in addition to the "religious, hospital or charitable purposes" which are expressly designated in the section, does violence to the plain meaning of the language used, to the intent of the voters who adopted the section, and to settled principles of statutory construction.

First, the Constitution itself is specific in its property tax exemption provisions. Thus, section 1 of article XIII designates as "exempt from taxation . . . property used for free public libraries and free museums, growing crops, property used exclusively for public schools." Section 1a of article XIII declares that "Any educational institution of collegiate grade . . . not conducted for profit, shall hold exempt from taxation its buildings and equipment, its grounds . . . , its securities and income used exclusively for the purposes of education." Other specific exemptions are listed in article IX. Section 10 of that article declares that "All property now or hereafter held in trust for the founding, maintenance or benefit of the Leland Stanford Junior University . . . may be exempted by special act from State taxation . . . and all other real property so held and used by the university for educational purposes exclusively, may be similarly exempted from county and municipal taxation. . . ." Section 11 provides that "All property now or hereafter belonging to 'The California School of Mechanical Arts,' . . . shall be exempt from taxation." Section 12 makes the same provision as to "All property now or hereafter belonging to the 'California Academy of Sciences.'" Section 13 declares that "All property now or hereafter belonging to the Cogswell Polytechnical College . . . shall be exempt from taxation." Section 15 specifies that "All property as of July 1, 1929, held in trust for the founding, maintenance or benefit of the Henry E. Huntington Library and Art Gallery and the increments thereof and all personal property received in exchange therefor shall be exempt

from taxation." In view of these unusually express and specific designations in the Constitution of the property to which the people are willing to grant tax exemption, it appears to me too clear for serious debate among jurists following the law that if by the provisions of section 1c of article XIII it was intended to grant exemption to property devoted to educational purposes, then the language used would have said so, clearly and precisely.

Second, the fact that as originally submitted to the Legislature section 1c referred to property used for "religious, *educational*, hospital or charitable purposes," (italics added) but that before being submitted to the people for a vote the classification of "educational" was deleted from the measure, is a further indication of the intent that property devoted to such purposes not be included in the authorization for exemption. This view is likewise borne out by the presentation of the measure made in the official voters' pamphlet, wherein the argument in favor of adopting section 1c refers to the amendment as "FAIR PLAY FOR CHARITIES" and declares, among other things, that "To be exempted, property must be owned and used exclusively for the purposes stated. The amendment does not authorize exemption of investment property or large land-holdings. Churches and colleges already are exempt. Competent legal authority advises that *schools other than colleges will not be exempted under this amendment because the Legislature expressly eliminated the term 'educational.'*" (Italics added.) At no point

in the arguments concerning the measure, either pro or con, are the above declarations disputed. It thus appears clear that the voters approved the measure in the belief that property used for educational purposes was not included in the authorized exemptions.

Moreover, the fate of other attempted amendments of the Constitution so as to specifically authorize the exemption of property used for private schools of less than collegiate grade expresses more pointedly than can mere words the affirmative intent of the voters of this state that such property continue on the tax rolls. In 1926 a proposed amendment to section 1a of article XIII, submitted as proposition No. 11 on the ballot, to extend the exemption to property used for educational purposes by "any educational institution of secondary grade" was defeated by the vote of the people. Within seven years the issue was again presented, as proposition No. 4 on the 1933 ballot, and again the people refused to amend section 1a so as to extend exemption to the property of "Any private educational institution of less than collegiate grade." It is my firm conviction that this court should not, in the guise of statutory construction, effect an amendment of the Constitution which the voting citizens of California have repeatedly rejected.

Finally, the people of this state, for the purpose of securing the "equality of taxation which results from subjecting all property to the same burden" (*Watchtower B. & T. Soc. v. County of L.A.* (1947), 30 Cal. 2d 426, 429), have provided in section 1 of article XIII of the Constitution that "All property in the

State except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided." To carry out the objective of equality in taxation, "Constitutional provisions and statutes granting exemption from taxation are strictly construed to the end that such concession will be neither enlarged nor extended beyond the plain meaning of the language employed. [Citations.]" (*Cedars of Lebanon Hosp. v. County of L.A.* (1950), 35 Cal. 2d 729, 734; see also *Pacific Home v. County of Los Angeles* (1953), 41 Cal. 2d 844, 849; *Sutter Hospital v. City of Sacramento* (1952), 39 Cal. 2d 33, 39; *Watchtower B. & T. Soc. v. County of L.A.* (1947), *supra,* 30 Cal. 2d 426, 428.) "The provisions of . . . [California's] Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise." (Const., art. I, § 22.) The justice of this court, regardless of personal views on social, political, economic or religious subjects, are in duty bound to support the Constitution and laws of this state. "The powers of the government of . . . California shall be divided into three separate departments—the legislative, executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this Constitution expressly directed or permitted." (Const., art. III, §1.) Obedient to my concept of judicial duty I must apply the firmly established principles of construction

above delineated, give effect to the plain intent and specific language of the framers of section 1c of article XIII of the Constitution, respect the principle of division of powers of government above quoted, and hold unauthorized the purported exemption of property, however laudatory the objectives, which is sought to be sustained on the sole basis that the property is "used exclusively for school purposes of less than collegiate grade"—a use which is not of a character specified in the constitutional authorization, and which is therefore beyond the power of either the Legislature or this court to write into the Constitution.

The judgment of the superior court, following the law, should be affirmed.

Schauer, J.

We concur:

Shenk, J.

Carter, J.

Appendix B

In the Superior Court of the State of California, in and for the County of Alameda.

Alfred J. Lundberg, Plaintiff, vs. County of Alameda, City of Oakland, et. al., Defendants, The Roman Catholic Welfare Corporation of San Francisco A (California) Corporation, Intervenor.	No. 247,407 Department No.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The action above came on regularly for trial on June 4 and 5, 1953, by stipulation of the parties, before the court sitting without a jury, a jury not having been demanded, Judges A. J. Woolsey, Cecil Mosbacher, and James R. Agee, presiding, upon the issues joined by the plaintiff's Amended Complaint, plaintiff being represented by Henry C. Clausen, Esq., the Answer thereto of defendants County of Alameda; City of Oakland; Russell C. Horstmann, as County Assessor of Alameda County; Roger Coit, as County Treasurer of Alameda County; Edwin Meese, Jr. as County Tax Collector of Alameda County; Chester

Stanley, as Chairman of the Board of Supervisors of Alameda County; Clifford Rishell, as Mayor of the City of Oakland, said defendants being represented by J. F. Coakley, District Attorney of the County of Alameda; R. Robert Hunter, Assistant District Attorney; Richard H. Klippert, Deputy District Attorney; Richard J. Moore, Deputy District Attorney; John W. Collier, City Attorney of the City of Oakland; Robert E. Nisbet, Deputy City Attorney; Edmund G. Brown, Attorney General of the State of California; and Clarence A. Linn, Assistant Attorney General, and the Answer thereto and Complaint in Intervention of Intervenor, the Roman Catholic Welfare Corporation of San Francisco, a (California) Corporation, said Intervenor being represented by Andrew F. Burke, Esq., and the answer of plaintiff to said Complaint in Intervention, and the court having heard the testimony and considered the evidence and examined the proofs offered by the respective parties, and the cause having been briefed by the said parties and briefs having been filed by Amicus Curiae, and said cause having been submitted to the court for decision, and the court being fully advised in the premises, now makes this its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. The court finds that at all times mentioned herein, plaintiff has been and is the owner of real and personal property located in said defendant County and defendant City, and in the State of

California, and a citizen and resident and taxpayer thereof; and assessed for and liable to pay taxes thereon and therein, as provided by law; and within one year before the commencement of this action, has paid taxes thereon and therein.

2. The court finds that the citizen, resident taxpayers of said defendant City and County and of said State number many thousands; that plaintiff and said persons are in the same class; that plaintiff and each and all of said persons are affected by all of the matters and things hereinafter mentioned and are subject to a like injury and damage as the injuries complained of in plaintiff's amended complaint; that there are common questions of law and fact affecting their rights, and a common relief is sought; that these persons united in interest with plaintiff are too numerous to make it practical to bring them before the court and that therefore plaintiff brought this action on his own behalf as such owner, resident, citizen and taxpayer, and also in behalf of all and singular the said citizens and residents and taxpayers of said City and County and State.

3. The court finds that at all times mentioned herein defendant County has been and now is a political subdivision of the State of California, and defendant City has been and now is a municipal corporation organized and existing under and by virtue of the laws of said State.

4. The court finds that defendant County and said defendant officers thereof are charged, as provided by law, with the assessment and receipt of returns of all

property in said County and City for the purpose of collecting real and personal property taxes, and with the receipt of claims and affidavits for exemptions from said taxation; and said defendants are charged, as provided by law, pursuant to said assessment and returns, with the collection of said taxes on all said property, except such taxes and on such property as are exempt therefrom under and in accordance with valid tax exemption laws.

5. The court finds that the legislature of said State, by Chapter 242 of the Statutes of 1951, enacted an amendment to the Welfare Exemption Act, purporting to amend Section 214, Revenue and Taxation Code, which said purported amendment reads as follows:

"An act to amend Section 214 of the Revenue and Taxation Code, relating to the welfare exemption.

The people of the State of California do enact as follows:

Section 1. Section 214 of the Revenue and Taxation Code is amended to read:

214. Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

(1) The owner is not organized or operated for profit;

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual;

(3) The property is not used or operated by the owner or by any other person for profit regardless of the purposes to which the profit is devoted;

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession;

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where such use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose;

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes;

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution which, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States, and whose objects are the encouragement or conduct of scientific investigation, research and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the 'welfare exemption.' This exemption shall be in addition to any other exemption now provided by law. This section shall not be construed to enlarge the college exemption. Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital or charitable funds, foundations or corporations, which property and funds, foundations or corporations meet all of the requirements of this section, shall be deemed to be within the exemption provided for in Section 1c of Article XIII of the Constitution of the State of California and this section."

6. The court finds that thereafter, by referendum measure, as provided by law, there was submitted to the electors of California for their approval or disapproval, the said proposed amendment to the Welfare Exemption Act. Said electors of California, by their vote on November 4, 1952, approved said proposed legislation.

7. The court finds that the defendants, and their agents, servants, officers and employees, unless enjoined and restrained by an order of this court, will under and by virtue of said amendment of 1951, fail to assess and tax, and fail to collect taxes, and will receive and approve claims for exemption, in respect of properties used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital or charitable funds, foundations, or corporations, which properties and funds, foundations or corporations meet all of the requirements of said

Section 214, as amended, and thereby cast upon and force plaintiff and other taxpayers of said County and City and State to bear and pay the taxes so exempted; said taxes which will be thus borne by plaintiff and said taxpayers, other than those owning the said exempted properties, will constitute a substantial and additional burden, that the amount of taxes for the fiscal year 1952-1953 on such properties, which under said amendment would hereafter be exempt, was $1,123,882.99; that this burden would thus be added to the tax rolls of actual taxpayers, including plaintiff, and meanwhile the persons, corporations or organizations owning said properties thus immune from real or personal taxes, would receive the facilities for which taxes are necessarily levied, namely, fire, police, health and traffic, among others.

8. The court finds that plaintiff has no plain, speedy or adequate remedy at law, and filed his Amended Complaint, in the court above, as a complaint and as an affidavit for the purpose of securing from said court a temporary restraining order and a temporary and a permanent injunction and injunctions against the enforcement and operation of said invalid amendment of 1951.

9. The court finds that the said intention and acts of defendants to enforce and implement said amendment of 1951, by exemption thereunder of said properties, will injure and take from plaintiff and the other taxpayers of said County, and City and State, their said property and property rights, and will cause him and them, material and irreparable loss.

10. The court finds that said amendment of 1951 did not violate Section 24 of Article IV of the Constitution of California in that the title of the ballot by which there was submitted to the electors of California the said referendum did express that there would be exempted thereunder the property of parochial or church schools, said ballot title appearing on the November 4, 1952 State general election ballot, as follows:

	"TAXATION: WELFARE EXEMPTION OF NONPROFIT SCHOOL PROPERTY. Act of Legislature submitted to electors by referendum. Act amends Section 214, Revenue and Taxation Code.	YES
3	Extends property tax exemption, known as welfare exemption, to property used exclusively for schools of less than collegiate grade owned and operated by nonprofit religious, hospital or charitable organizations."	NO

(Boldface type of said ballot underscored by us and capitalized.)

11. The court finds that the said purported amendment to the Welfare Exemption Act purporting to amend Section 214, Revenue and Taxation Code, violates Section 1 of Article XIII of the Constitution of California which provides, in part, that all property in the State, except as otherwise in the Constitution of California provided and not exempt under the laws of the United States shall be taxed in proportion to its value to be ascertained as provided by law, in that there is and was no authorization in the Constitution of California for the exemption of property used for school purposes of less than collegiate grade and owned and operated by religious, hospital or charitable funds, foundations, or corporations.

12. The court finds that Section 1c of Article XIII of the Constitution of California limits, and was intended to limit, the authority of the Legislature to exempt from taxation only "property used exclusively for religious, hospital or charitable purposes and owned by community chests, funds, foundations or corporations organized and operated for religious, hospital or charitable purposes, not conducted for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual"; and it further finds that in proposing and adopting the said Section 1c of Article XIII of the Constitution of California, the Legislature of California and the voters of California did not intend to grant any authorization to the Legislature, or otherwise, to exempt property used for school purposes of less than collegiate grade and owned and operated by religious, hospital or charitable funds, foundations, or corporations, and that said Section 1c of Article XIII did not and does not and was not intended to include any authorization to the Legislature, or otherwise, to exempt any property used for any of said schools; and that said construction here so found is in accordance, among other things:

(a) with the legislative history of said Section 1c of Article XIII, and the fact that the Constitutional Amendment as originally proposed to the legislature originally read as follows:

> "Sec. 1c. The Legislature may exempt from taxation all or any portion of the property owned and used for any of the purposes hereinafter mentioned by community chests, funds, foundations,

or corporations organized and operated for religious, educational, hospital or charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

and that the word "educational" was stricken therefrom before said constitutional amendment was approved by the Legislature or submitted to the people, and

(b) with the official arguments to the electors of said State of California by which the Legislature submitted to said electors the said constitutional provision, Section 1c of Article XIII, for approval or disapproval, on November 7, 1944, and that in said submission the proponents thereof officially represented to said voters as follows:

"Argument in Favor of Assembly Constitutional Amendment No. 17

'FAIR PLAY FOR CHARITIES'

This amendment corrects a serious defect in California's Constitution.

California is the only State which taxes the property of welfare agencies serving youth, old age, the sick and handicapped. Proposition Four authorizes the Legislature to exempt these organizations from property taxes and thus place California in line with the sound and wise practice of the other 47 States.

These nonprofit organizations assist the people by providing important health, citizenship, and welfare services. They are financed in whole or

in part by your contributions either directly or through a Community Chest. It is good public policy to encourage such private agencies by exemption rather than to continue to penalize and discourage them by heavy taxation.

The ability of these agencies to serve you is reduced when a share of your contribution given to aid their work is absorbed by the property tax. The tax has also discouraged and in many cases prevented charitable agencies from securing greatly needed additional facilities to meet growing population needs. Both the present services and the equipment of these agencies are far below normal in California. The tax has thus proved a bad tax in its effect on these important services.

Of California's total tax levy of $316,001,918.00, approximately 383 charities owning real property pay $759,916.21. Exemption of these charities from taxation would mean a loss to counties of only 2/10ths of 1%. To the taxpayer this would mean a possible 1¢ increase per hundred dollars of assessed valuation. Additional health and welfare services resulting from the exemption, in fact, would save taxpayers the entire exemption cost.

The principle of tax exemption for charitable agencies has been recognized in the California Income Tax Law. Proposition Four follows the wording of that law but it is not as broad. Experience under the Income Tax Law has proved that Proposition Four will not open the door to unworthy enterprises seeking to evade taxes. The meaning of every phrase has been clearly defined by the taxing authorities and by the courts. They have successfully confined exemptions to bona fide nonprofit charitable institutions.

To be exempted, property must be owned and used exclusively for the purposes stated. The amendment does not authorize exemption of investment property or large land-holdings. Churches and colleges already are exempt. Competent legal authority advises that schools other than colleges will not be exempted under this amendment because the Legislature expressly eliminated the term 'educational.'

This amendment was proposed by the State Legislature by a vote of 90-7. In a state-wide public opinion survey among California voters a substantial majority expressed their conviction that property used exclusively for religious, hospital and charitable purposes should be tax exempt.

This is sound and timely legislation. Its passage will cure a long-standing defect and an injustice in California tax practice. It will place California in line with the sound policy and experience of the Federal Government and the other States. It should be approved.

CHARLES W. LYON,
Speaker and Member of
the Assembly,
Fifty-ninth District.

THOMAS A. MALONEY,
Speaker Pro Tempore and
Member of the Assembly,
Twentieth District."

and, so finds said construction to be in accordance
(c) with the practical construction placed thereon by
the said California Legislature, in adopting Section

214 of the Revenue and Taxation Code, Chapter 241, Statutes of California of 1945, Section 1, page 706, and passed within six months after the adoption of said Section 1c of Article XIII of the Constitution of California, which Section 214 provided:

"Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

(1) The owner is not organized or operated for profit;

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual;

(3) The property is not used or operated by the owner or by any other person for profit regardless of the purposes to which the profit is devoted;

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession;

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where such use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose;

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes;

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution which, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States, and whose objects are the encouragement or conduct of scientific investigation, research and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the 'welfare exemption.' This exemption shall be in addition to any other exemption now provided by law. This section shall not be construed to enlarge the college exemption or to extend an exemption to property held by or used as an educational institution of less than collegiate grade."

and,

(d) with the contemporaneous construction placed thereon by the Attorney General of California in two opinions found in 5 *Opin. Atty. Gen. Calif.*, pp. 152-155, dated April 5, 1945 and 8 *Opin. Atty. Gen. Calif.*, pp. 72-76, dated August 8, 1946, in which the Attorney General held that the word "charitable" has no fixed and invariable meaning, that the word "char-

itable" is used in Section 1c of Article XIII of the California Constitution in its narrow sense as referring to welfare agencies serving youth, old age, the sick and handicapped, that the argument to the voters in support of the adoption of Section 1c informed them that the language of Section 1c follows the wording of the California Income Tax Law but is not as broad, that the relevant California Income Tax Law provisions are modeled upon the provisions of the Federal Internal Revenue Code, that the said California and Federal Income Tax Law provisions contain language similar to Section 1c except that the words "scientific, literary or educational purposes" have been eliminated from Section 1c and the words "hospital purposes" inserted, that Section 1c is in this sense not as broad as the said income tax provisions, that if the word "charitable" is construed to include property used for scientific, literary, or educational purposes, the exemption in Section 1c would be substantially as broad as the exemption provided by the Income Tax Law, and that the word "charitable" as used in Section 1c was therefore not intended by the people to confer upon the legislature the power to exempt property used for the omitted "scientific, literary or educational purposes", and

(e) with, and said intent not to include educational institutions is further found from, the context and wording of said Section 1c, in view of the fact that the word "charitable" is used in Section 1c in its more limited sense in company with words which normally fall within the broader definition of the word "charitable", and in view of the fact that the word "educa-

tional" is missing from the specified exempt purposes, whereas it has been included in similar exemption provisions in California tax exemption statutes and the Federal Internal Revenue Code.

13. The court finds that the words "religious, hospital or charitable purposes" as used in Section 1c of Article XIII of the California Constitution do not mean or include nor were they intended by the Legislature of said State as proposed or by the people when adopted to mean or include educational purposes.

14. The court finds that the said purported legislation alleged in paragraphs VI and VII of plaintiff's Amended Complaint, by which a later legislature of California sought in 1951 to adopt a Chapter 242 of the Statutes of 1951, insofar as it purported to enact an amendment to the said Welfare Exemption Act by amending Section 214 Revenue and Taxation Code, as set forth in Exhibit "A" to the said Amended Complaint and made a part thereof, and thus referred to and made a part hereof, was and is in violation of Section 1, Article XIII of the California Constitution and is therefore null and void, and in excess of the power and jurisdiction of said Legislature and of the electors to do, pass, enact, provide for or adopt.

15. In view of its other findings of fact and its conclusions of law herein, the Court deems it unnecessary to make any findings with respect to any allegations of plaintiff's amended complaint save and except those with respect to which findings are herein made and, for that reason, it intentionally omits to make any findings with respect to such other allegations.

16. The court finds that all the allegations and denials of the defendants County of Alameda; City of Oakland; Russell C. Horstmann, as County Assessor of Alameda County; Roger Coit, as County Treasurer of Alameda County; Edwin Meese, Jr., as County Tax Collector of Alameda County; Chester Stanley, as Chairman of the Board of Supervisors of Alameda County; Clifford Rishell, as Mayor of the City of Oakland, set forth in their said Answer, inconsistent with the findings above, are not true.

17. The court finds that all the allegations and denials of Intervenor, The Roman Catholic Welfare Corporation of San Francisco, a (California) Corporation, set forth in its Answer and its Complaint in Intervention, inconsistent with the findings above, are not true.

CONCLUSIONS OF LAW

And, as conclusions of law from the foregoing findings of fact, the court concludes, declares and orders:

1. That the court concludes in all respects as set forth in the foregoing Findings of Fact. Said findings have been made upon issues which are determinative of the cause, and any further finding or findings upon issues other than those embraced in the foregoing findings would be immaterial and are not made for that reason.

2. That any conclusion of law that is contained in the foregoing Findings of Fact is hereby expressly incorporated in these conclusions of law by this express reference thereto.

3. That the said purported amendment referred to in paragraphs VI and VII of plaintiff's Amended Complaint, Chapter 242 of the California Statutes of 1951, being said referendum measure known as Proposition 3 and purported to have been approved by the electors of California on November 4, 1952, purporting to enact an amendment to the Welfare Exemption Act, Section 214, Revenue and Taxation Code of California, set forth in Exhibit "A" to plaintiff's Amended Complaint, is, and should be declared to be, violative of Section 1, Article XIII of the California Constitution, and is unconstitutional and therefore null, void, and of no force and effect.

4. That the said defendants County of Alameda; City of Oakland; Russell C. Horstmann, as County Assessor of Alameda County; Roger Coit, as County Treasurer of Alameda County; Edwin Meese, Jr., as County Tax Collector of Alameda County; Chester Stanley, as Chairman of the Board of Supervisors of Alameda County; Clifford Rishell, as Mayor of the City of Oakland, and each of them, their agents, servants, officers and employees, be and should be, enjoined and restrained from carrying into effect the said provisions of said purported law herein declared void, and from failing to assess and tax, and from failing to collect taxes, and from receiving and approving claims for exemption, in respect of said properties referred to in said purported amendment, and from adding to the taxes required to be paid by plaintiff and said other taxpayers of said County of Alameda and said City of Oakland and said State of California, the sum

total or any part of taxes which otherwise would be levied and paid on properties so purported to have been exempted under said void amendment, and said defendants, their said agents, servants and employees, be and should be ordered to restore to the tax and assessment rolls any properties heretofore omitted or excluded therefrom under said void law, and to assess and tax, under the provisions of law applicable thereto, the said properties purported to have been exempted under said void law and to collect said taxes.

Let judgment be entered accordingly.

Dated: September 14, 1953.

A. J. Woolsey,
Judge of the Superior Court.

Cecil Mosbacher,
Judge of the Superior Court.

In the Superior Court of the State of California,
In and For the County of Alameda.

Alfred J. Lundberg, Plaintiff, vs. County of Alameda, City of Oakland, et. al., Defendants, The Roman Catholic Welfare Corporation of San Francisco, a (California) Corporation, Intervenor.	No. 247,407 Department No. 1

JUDGMENT

The action above came on regularly for trial on June 4 and 5, 1953, by stipulation of the parties, before the court sitting without a jury, a jury not having been demanded, Judges A. J. Woolsey, Cecil Mosbacher and James R. Agee, presiding, upon the issues joined by the plaintiff's Amended Complaint, plaintiff being represented by Henry C. Clausen, Esq., the Answer thereto of defendants County of Alameda; City of Oakland; Russell C. Horstmann, as County Assessor of Alameda County; Roger Coit, as County Treasurer of Alameda County; Edwin Meese, Jr., as County Tax Collector of Alameda County; Chester Stanley, as Chairman of the Board of Supervisors of Alameda County; Clifford Rishell, as Mayor of the City of Oakland, said defendants being represented by

J. F. Coakley, District Attorney of the County of Alameda; R. Robert Hunter, Assistant District Attorney; Richard H. Klippert, Deputy District Attorney; Richard J. Moore, Deputy District Attorney; John W. Collier, City Attorney of the City of Oakland; Robert E. Nisbet, Deputy City Attorney; Edmund G. Brown, Attorney General of the State of California; and Clarence A. Linn, Assistant Attorney General, and the Answer thereto and Complaint in Intervention of Intervenor, The Roman Catholic Welfare Corporation of San Francisco, a (California) Corporation, said Intervenor being represented by Andrew F. Burke, Esq., and the Answer of plaintiff to said Complaint in Intervention, and the court having heard the testimony and considered the evidence and examined the proofs offered by the respective parties and briefs having been filed by Amicus Curiae, and said cause having been submitted to the court for decision, and the court heretofore having made and caused to be filed herein its written Findings of Fact and Conclusions of Law, and the Court being fully advised;

Wherefore, by reason of the law and the findings of fact aforesaid, It is Ordered, Adjudged and Decreed that the said purported Amendment to said law referred to in paragraphs VI and VII of plaintiff's Amended Complaint, Chapter 242 of the California Statutes of 1951, being said referendum measure known as Proposition 3 and purported to have been approved by the electors of California on November 4, 1952, purporting to enact an amendment to the Welfare Exemption Act, Section 214, Revenue and Taxa-

tion Code of California, set forth in Exhibit "A", Plaintiff's Amended Complaint, is, and is hereby declared to be violative of Section 1, Article XIII of the California Constitution and is unconstitutional and therefore null, void, and of no force and effect.

It is Further Ordered, Adjudged and Decreed that the said defendants County of Alameda; City of Oakland; Russell C. Horstmann, as County Assessor of Alameda County; Roger Coit, as County Treasurer of Alameda County; Edwin Meese, Jr., as County Tax Collector of Alameda County; Chester Stanley, as Chairman of the Board of Supervisors of Alameda County; Clifford Rishell, as Mayor of the City of Oakland, and each of them, their agents, servants, officers and employees, be and are hereby, enjoined and restrained from carrying into effect the said provisions of said purported law herein declared void, and from failing to assess and tax, and from failing to collect taxes, and from receiving and approving claims for exemption, in respect of said properties referred to in said purported amendment, and from adding to the taxes required to be paid by plaintiff and said other taxpayers of said County of Alameda and said City of Oakland and said State of California, the sum total or any part of taxes which otherwise would be levied and paid on properties so purported to have been exempted under said void amendment, and said defendants, their said agents, servants and employees, be and each is hereby ordered to restore to the tax and assessment rolls any properties heretofore omitted or excluded therefrom under said void amendment,

and to assess and tax, under the provisions of law applicable thereto, the said properties purported to have been exempted under said void law, and to collect said taxes.

It is Further Ordered, Adjudged and Decreed that plaintiff do have and recover from defendants and intervenor his costs and disbursements herein in the sum of $38.45.

Dated this 14th day of September, 1953.

A. J. Woolsey,
Judge of the Superior Court.

Cecil Mosbacher,
Judge of the Superior Court.

Appendix C

In the Superior Court of the State of California
In and For the County of Alameda

Alfred J. Lundberg, Plaintiff, vs. County of Alameda, City of Oakland, et. al., Defendants, The Roman Catholic Welfare Corporation of San Francisco A (California) Corporation, Intervenor.	No. 247,407 Departments Nos. 1, 5 and 11

DISSENTING FINDINGS OF FACT AND CONCLUSIONS OF LAW OF JUDGE JAMES R. AGEE

The action above came on regularly for trial on June 4 and 5, 1953, by stipulation of the parties, before the court sitting without a jury, a jury not having been demanded, Judges A. J. Woolsey, Cecil Mosbacher, and James R. Agee, presiding, upon the issues joined by the plaintiff's Amended Complaint, plaintiff being represented by Henry C. Clausen, Esq., the Answer thereto of defendants County of Alameda; City of Oakland; Russell C. Horstmann, as County Assessor of Alameda County; Roger Coit, as County Treasurer of Alameda County; Edwin Meese, Jr. as County Tax Collector of Alameda County; Chester

Stanley, as Chairman of the Board of Supervisors of Alameda County; Clifford Rishell, as Mayor of the City of Oakland, said defendants being represented by J. F. Coakley, District Attorney of the County of Alameda; R. Robert Hunter, Assistant District Attorney; Richard H. Klippert, Deputy District Attorney; Richard J. Moore, Deputy District Attorney; John W. Collier, City Attorney of the City of Oakland; Robert E. Nisbet, Deputy City Attorney; Edmund G. Brown, Attorney General of the State of California; and Clarence A. Linn, Assistant Attorney General, and the Answer thereto and Complaint in Intervention of Intervenor, the Roman Catholic Welfare Corporation of San Francisco, a (California) Corporation, said Intervenor being represented by Andrew F. Burke, Esq., and the answer of plaintiff to said Complaint in Intervention, and the court having heard the testimony and considered the evidence and examined the proofs offered by the respective parties, and the cause having been briefed by the said parties and briefs having been filed by Amicus Curiae, and said cause having been submitted to the court for decision, and the court being fully advised in the premises, Judge James R. Agee now makes his findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. That the allegations of paragraphs I and II of said amended complaint are true.

2. That the allegations of paragraph III of said amended complaint are true except that defendant City of Oakland has at all times been and now is a

municipal corporation organized and existing under and by virtue of the laws of the State of California.

3. That the allegations of paragraphs V, VI and VII of said amended complaint are true.

4. That the allegations of paragraph IX of said amended complaint are true except that the additional annual taxes referred to therein is the sum of One Million One Hundred Twenty-three Thousand Eight Hundred Eighty-two and 99/100 Dollars ($1,123,-882.99) or thereabouts.

5. That the allegations of paragraph X of said amended complaint are true except that said amendment of 1951 is valid and not invalid.

6. That the allegations of paragraph XI of said amended complaint are untrue.

7. That the allegations of paragraph VIII of said amended complaint are and each of them is untrue, and in particular:

(a) Said amendment of 1951 does not violate Section 30, Article IV, of the Constitution of the State of California; or Section 8, Article IX, of the Constitution of the State of California; or Section 1, Article XIII, of the Constitution of the State of California.

(b) Said amendment of 1951 does not violate the 1st Amendment to the Constitution of the United States.

(c) Said amendment of 1951 does not violate the 14th Amendment to the Constitution of the United States or Section 1, or Section 11, or Section 13, or

Section 21, of Article I, or Section 25, of Article IV, of the Constitution of the State of California.

(d) Said amendment of 1951 does not violate Section 24, Article IV of the Constitution of the State of California.

8. That it is true that both the Legislature and the Electorate intended that Section 1c of Article XIII of the Constitution of the State of California authorized the Legislature, by appropriate action, to exempt from taxation schools of less than collegiate grade which comply with the requirements of said section and any other laws pertinent thereto.

9. (Note: The rule that findings should be as to ultimate facts and should not include evidentiary and argumentative matters is recognized and Finding 8 above is drawn in conformance with this rule; but see Finding 12, signed by the other two judges; hence, the following finding:)

In 1943, both the Assembly and Senate of the Legislature of California, by a vote in excess of two-thirds of the members of each, passed a proposed amendment to the Constitution of California which was approved and ratified by the people at the general election of November 7, 1944; this amendment (Section 1c, Article XIII) provided that "the Legislature may exempt from taxation all or any portion of property used exclusively for religious, hospital or charitable purposes and . . . not conducted for profit . . ."; the amendment as originally drafted by the Legislature contained the word "educational" in addi-

tion to the words, "religious, hospital or charitable"; said amendment, when re-drafted, was re-phrased and the word "educational" was eliminated; prior to that time there had been many decisions of the appellate courts of this State holding that non-profit educational purposes are "charitable" within the legal meaning of that word; that this legal interpretation is and was in accordance with the settled law of the other states of this country; that the elimination of the word "educational" in the re-draft of the proposed constitutional amendment was for the purpose and with the intent of avoiding surplusage of language; that had the Legislature intended to exclude property used for educational purposes it could have done so in simple language in the proposed constitutional amendment, as illustrated by the language it shortly thereafter did use in the last sentence of section 214 of the Revenue and Taxation Code, as originally enacted by it in 1945; that the then Secretary of the State accepted, caused to be printed and distributed to the voters an argument in favor of the adoption of said amendment; that said argument was made by two members of the then Assembly, to wit, Charles W. Lyon and Thomas A. Maloney; that said argument contained the following: "Competent legal authority advises that schools other than colleges will not be exempted under this amendment because the Legislature expressly eliminated the term 'educational' ". That said argument in favor of said amendment did not represent that this was the intent of the Legislature and was not unequivocal but on the other hand, in effect, warned the

voters that the most that could be said is that some undisclosed "competent legal authority" advised that private nonprofit schools other than colleges were excluded; that the argument against said amendment was prepared by another member of the Assembly, T. Fenton Knight, and distributed to the voters along with the said argument in favor of said amendment; that Knight's argument clearly pointed out that "the language (of the amendment) is so broad that it is impossible for any voter to know just what property he is authorizing the Legislature to exempt. If he does have any clear idea on the subject, it is unlikely to coincide with that of his legislative representative to whom the authority is delegated." That despite this admonition the amendment was favorably voted upon by the people at the general election of 1944. That thereafter, and pursuant to such constitutional amendment, the Legislature in 1945 adopted Section 214 of the Revenue and Taxation Code, the last sentence of which provided: "This section shall not be construed to enlarge the college exemption or to extend an exemption to property held by or to be used as an educational institution of less than collegiate grade." That the inclusion of this last sentence was an interpretation and a recognition by the Legislature that it had the authority to exempt schools of less than collegiate grade but did not at that time desire to make such exemption; that it indicates that the Legislature felt that because of the well-established meaning of the word "charitable" the exemption would automatically apply to said educational institutions in the absence

of such a specific prohibition; that said last sentence of section 214 was not, and was not intended by the Legislature to be meaningless and mere surplusage. That in 1951, by an almost unanimous vote (108 to 3) the Legislature adopted an amendment to said section 214 which made the tax exemption therein provided for available to non-profit schools of less than collegiate grade; that this amendment was submitted to the people by way of referendum and was approved and ratified at the general election of November 4, 1952; that the 1951 amendment even complied, in substance, with the method required to amend the Constitution, to wit, two-thirds of each of the two houses and a majority of the electorate. (Art. XVIII, sec. 1). That the Legislature, in enacting the 1951 amendment, interpreted the Constitution, and in particular Article XIII, section 1c thereof, as authorizing it to grant such exemption, that the electorate, in voting upon the amendment in 1952, likewise interpreted the Constitution as giving such authorization to the Legislature; that the ballot argument against Proposition 3 in the 1952 referendum election stated that the people should vote against the measure because "the constitutional amendment, now claimed to authorize the exemption was never so intended"; that the voters were thus called upon to evidence what they intended by Article XIII, Section 1c, of the Constitution of the State of California; that the people by their vote settled the basic issue of this present litigation, reiterated what they intended by section 1c (the 1944 constitutional

amendment) and confirmed the interpretation placed thereon by the Legislature.

10. That said amendment of 1951 is, in any event, valid as to personal property, all of the requirements of Section 14 of Article XIII of the Constitution of the State of California having been complied with.

CONCLUSIONS OF LAW

1. That the 1951 amendment to Section 214 of the Revenue and Taxation Code is valid in all respects and is not invalid or unconstitutional in any respect.

2. That any conclusion of law contained in the foregoing Findings of Fact is hereby expressly incorporated in these Conclusions of Law by this express reference thereto.

3. That judgment should be entered in favor of defendants.

Dated, September 24, 1953.

James R. Agee,
Judge of the Superior Court.

Appendix D

Alfred J. Lundberg,
Respondent,

vs.

County of Alameda, et al.,
Defendants and Appellants.

Roman Catholic Welfare Corporation of San Francisco,
Intervenor and Appellant.

In the Supreme Court of the State of California
In Bank

Pursuant to certified copy of order of substitution of the Superior Court of the County of Alameda, it is ordered that Paul W. Heisey, as Special Administrator of the Estate of Alfred J. Lundberg, be substituted as party plaintiff-respondent in the above entitled appeal in the place and stead of Alfred J. Lundberg, deceased, and pursuant to certified copy of a further order of the Superior Court of the County of Alameda, it is ordered that Paul W. Heisey, in his individual capacity, be added as an additional plaintiff-respondent in the above entitled appeal.

Appendix E

In the trial court and in the California Supreme Court, pursuant to Rule 23, Rules on Appeal (36 C. 2d 1), and for the reasons set forth in the foregoing Jurisdictional Statement plaintiff requested that Plaintiff's Exhibits 5 and 6 be admitted in evidence and considered. The matter contained in said exhibits may be illustrated by the following pages from Plaintiff's Exhibit 6. It is one of the Roman Catholic High School Religious Series, being Book Three, entitled "Living Our Faith", issued under the official aegis of Cardinal Spellman in 1945. The following excerpts should suffice:

> "The question of union or separation of Church and State has perplexed men since the Protestant Revolt. The ideal situation exists when there is perfect union and accord between Church and State, with each supreme in its own field. Such an achievement, however, seems unlikely in the modern world." (page 246)
>
> * * *
>
> "In a Catholic country, when a dispute arises and settlement is unattainable, the rights of the Church should prevail, since it possesses the higher authority. It is the duty of the State to protect the Church.
>
> "When the majority of the citizens are non-Catholic, the Church does not insist on recognition as the State religion. In a dispute involving matters of faith or morals however, the Church insists on its rights, whatever the cost. An example is the firm stand of the Popes regarding

the education of youth in totalitarian countries." (page 246)

* * *

"If Church and State do not work together, education is harmed, marriage laws prove ineffective, and crime tends to become uncontrolled. Complete separation of Church and State would lead to religious indifference which is just as immoral in the State as in the individual." (page 246)

* * *

"THE CHURCH IN THE UNITED STATES. In this country the Church has flourished to such a degree that we may be inclined to think that separation is a satisfactory and workable plan. The Church holds that this is still a compromise and that the condition is the lesser of two evils." (page 247)

"COUNTERFEIT RELIGIONS. The material, size, and shape of the paper and metal money in the United States is determined and authorized by the government. No other money is legal tender, and any other agency issuing such money is guilty of counterfeiting. In the same way, non-Catholic methods of worshipping God must be branded counterfeit. Each in its own way more or less imitates the true religion, yet lacks the true value of the genuine Faith of Christ. Therefore we cannot practice them without dire penalty.

"NON-CATHOLIC SERVICES. A Catholic who attends a Protestant service violates his Faith in three ways: (1) he sins by false worship; (2) he weakens his own faith, and (3) he gives scandal. The Catholic knows that his is

the only true religion just as clearly as he knows that two and two makes four. Should he associate himself with non-Catholics in religious services, he would join a group which broke away from the true Church established by Christ Himself. Thus he would sin by false worship." (page 112)

* * *

"WEDDINGS AND FUNERALS. Sometimes it may seem obligatory to be present at non-Catholic weddings or funerals because of friendship, or ties created by birth or marriage with those of other religions. If a Catholic should attend such ceremonies, there is always a danger that his mere presence will be looked upon as taking an active part in false worship. Unless there is positive certainty that no scandal will be given, he should not even be a passive spectator at a non-Catholic wedding or funeral.

"NO ACTIVE PART. No matter what the circumstances, a Catholic cannot take an active part in any non-Catholic service. He may never act, therefore, either as a sponsor at a non-Catholic baptismal ceremony, or assist in any part of non-Catholic ritual. There can be no exception to this rule, even though abiding by it may offend our friends. Religious obligations are always more important than social obligations. The loss of earthly friendship is preferable to the loss of the friendship of Christ." (page 112)

* * *

"A FALSE RELIGION. Like all partially Christian sects, such social agencies as the Salvation Army, the Friend's Committee, and the Y.M.C.A. are not a true religion, and acceptance

of them as such is a form of false worship." (page 113)

* * *

"ASSOCIATION WITH NON-CATHOLICS. It is not required that we withdraw into a circle bounded by persons of our own Faith. This was possible when the European world was truly the seat of Christendom and of one belief. The modern world is made up of persons who hold many different creeds, or none. What the Church wishes is that a Catholic do everything possible to protect his God-given Faith against all forces which might lessen it to any degree.

"In our modern materialistic world, Catholics cannot be too careful to avoid the many pitfalls which endanger their Faith. Organizations, which appear outwardly as social in nature, often are the means of undermining belief in everything supernatural. Catholics who are geneuinely interested in preserving their Faith will not seek membership in these groups, even though it may mean greater social prestige or financial opportunities." (page 117)

* * *

"OTHER BANNED GROUPS. There are other societies which are not so severally condemned, but which Catholics may not join. These include the Knights of Pythias, the Odd Fellows, and the Sons of Temperance. These groups are chiefly fraternal, beneficiary, and charitable organizations, but in their foundation and membership they are non-Catholic. For this reason, Catholics, bound to avoid associations harmful to the Faith, may not cooperate with them.

"THE YMCA. The Young Men's Christian Association is an organization first established in

England in 1844 for social and religious work among the young. It grew out of meetings for prayer and Bible-readings which George Williams held in London for workers. As a religious organization, it is forbidden to Catholics. To make use of YMCA recreational facilities, hotel accommodations, and educational programs is not absolutely forbidden, but cooperation with non-Catholic groups can have the effect of lessening the hold on one's Faith." (pages 116-117)

* * *

"MASONRY A RELIGION. Catholics are opposed to Masonry for the same reason that they oppose Protestantism. It is a false religion. According to Mackey's Lexicon of Freemasonry, 'all the ceremonies of our Order begin and terminate with prayer, for Masonry is a religious institution.' It has been a religious organization since its foundation in England in 1717, since which time it has spread over the world, as a universal association." (pages 115-116)

* * *

"The Church is opposed to attendance at non-Catholic schools, for she recognizes the real danger to our faith." (page 55)

"Canon Law states: 'Catholic children shall not attend non-Catholic, neutral, or mixed schools, namely, those which are open also to non-Catholics' (Canon 1374). Therefore, by right and by Church law parents are required to register their children in Catholic schools." (page 238)

* * *

"In the words of Pope Pius XI: 'It is evident that both by right and in fact the mission to edu-

cate . . . belongs to the Church.' This means in practice that students must attend Catholic schools. It is not by any means sufficient that they receive brief instruction outside of school hours. We can only learn, know, and live our religion if we absorb it constantly from our surroundings.

"In the ideal educational atmosphere religion is infused into the whole process of learning. Students should be constantly aware of the unbreakable connection of the world with eternity. Teachers should be Catholics and, whenever possible, religious. Textbooks in every branch of knowledge and on every level of education from the first grade to the end of university training, should be Catholic publications when they are available." (page 237)

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"THE ROMAN INDEX. Whenever we speak of censorship, the question of the Roman Index of Forbidden Books usually arises. This index is a list of books which the Church forbids us to read because they are dangerous to faith and morals. It is composed of two sections:

1. The names of authors and works which are dangerous reading.
2. General classes of books which are forbidden.

"CLASSES OF FORBIDDEN BOOKS. The general classes of books which Catholics may not read because of danger to faith and morals are:

1. All books against faith or the foundations of Catholic belief, such as a denial of the immortality of the soul.

2. All books against Christian morals.
3. All books on religion by non-Catholics, unless their writing agrees with Catholic doctrine.
4. All non-Catholic editions of the Bible, because they are mutilated or changed from the original.
5. All books favoring forbidden societies, such as the Freemasons.
6. All books that advocate superstition, spiritism, or foretelling the future.

Catholics are not only specifically forbidden to read such books but they may not keep, lend, or sell them to others." (pages 152-153)

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"STATEMENTS IN COURT. A witness in court is called upon to tell the truth and nothing but the truth. He may not tell a lie, but if he has a very good reason he may withhold the truth. St. Thomas Aquinas says, 'It is one thing to withhold the truth and another to utter falsehood.' Truth must be revealed insofar as the law obliges it." (pages 213-214)

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"PETER'S PENCE. Just as individual parishes must join in aiding the work of a diocese, so the dioceses unite their financial resources to support the world-wide work of the universal Church as administered by Our Holy Father in Rome. The Pope must give aid to the Church in impoverished or devastated lands; he must aid in the establishment of a clergy in mission lands; he must maintain a large staff which will keep him informed of the trend of all world activities

and thought. For the support of this work in Rome, an annual collection is taken up throughout the world and forwarded to the Vatican. Like all other contributions to God, this Peter's Pence collection shows our willingness to make sacrifices for Him. In doing our share we fulfill a duty of justice; in addition we further the work of the Church throughout the world and share in the merits of Christ's redeeming grace." (page 288)